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2008 MAY 27 AM 8:40

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba BLACKWATER WORLDWIDE,

Plaintiff,

v.

KELLY BROUGHTON, in his capacity as Director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive,

Defendants.

Case No. 08 CV 0926 H (Wmc)

PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: To be determined by Court
Time: To be determined by Court
Place: Courtroom of the Honorable Marilyn L. Huff

[Declarations of Brian Bonfiglio and John Nadolenco, and Appendix of Authority Filed, and Proposed Orders Lodged Concurrently Herewith]

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater") applies *ex parte* to this Court for issuance of a Temporary Restraining Order and an Order to Show Cause re Preliminary Injunction.

Blackwater seeks a Temporary Restraining Order enjoining Defendants Kelly Broughton (in his capacity as Director of the Development Services Department of the City of San Diego), Afsaneh Ahmadi (in her capacity as Chief Building Official of the City of San Diego), the Development Services Department of the City of San Diego and the City of San Diego, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them from (1) enforcing the May 19, 2008 letter from Defendant Broughton purportedly refusing to issue a Certificate of Occupancy for the property located at 7685 Siempre Viva Road, Otay Mesa (the "Otay Mesa Facility") and/or refusing to allow Blackwater to occupy and utilize immediately its Otay Mesa Facility, and (2) refusing to perform the ministerial task of sending Blackwater a Certificate of Occupancy for the Otay Mesa Facility as required under San Diego Municipal Code ("SDMC") § 129.0114.

Blackwater also seeks issuance of an Order to Show Cause re Preliminary Injunction requiring Defendants to show cause why a preliminary injunction should not be issued enjoining Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them from (1) enforcing the May 19, 2008 letter from Defendant Broughton purportedly refusing to issue a Certificate of Occupancy for the Otay Mesa Facility and/or refusing to allow Blackwater to occupy and utilize immediately its Otay Mesa Facility, and (2) refusing to perform the ministerial task of sending Blackwater its

Certificate of Occupancy for the Otay Mesa Facility pursuant to SDMC § 129.0114.

This *Ex Parte* Application is made pursuant to Rule 65 of the Federal Rules of Civil Procedure and Southern District Civil Rule 83.3(h) on the grounds that unless Defendants are restrained as requested, Blackwater will be denied its statutory rights, will be irreparably harmed, and denied its constitutional rights to due process and equal protection, as well as its rights under the dormant Commerce Clause of the United States Constitution.

The Application is based on the attached Memorandum of Points and Authorities, the Declarations of Brian Bonfiglio and John Nadolenco filed concurrently herewith, the concurrently lodged [Proposed] Temporary Restraining Order, the concurrently lodged [Proposed] Order to Show Cause Re Preliminary Injunction, and such other oral and documentary evidence and argument as may be presented to the Court.

In accordance with Southern District Civil Rule 83.3(h), notice of this *Ex Parte* Application was given to Defendants and Michael Aguirre (City Attorney of the City of San Diego) by John Nadolenco (counsel for Blackwater) on May 23, 2008 by letter. A copy of that letter is attached as Exhibit A to the Declaration of John Nadolenco filed concurrently.

For the reasons explained below, Blackwater requests a ruling well before Monday, June 2, 2008.

DATED: May 26, 2008

MAYER BROWN LLP
JOHN NADOLENCO
CHRISTOPHER MURPHY

By: John Nadolenco
John Nadolenco
Attorneys for Plaintiff
BLACKWATER LODGE AND TRAINING CENTER, INC., dba BLACKWATER WORLDWIDE

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City of San Diego refuses to send Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater") a Certificate of Occupancy that would allow it to occupy and use a facility in Otay Mesa, which Blackwater developed to train sailors serving in the United States Navy. City officials have admitted that Blackwater is *entitled* to the Certificate of Occupancy under the San Diego Municipal Code (SDMC) because Blackwater unquestionably complied with the required approval process. Nonetheless, the City refuses to send Blackwater the Certificate because it and its officials are motivated by parochial political concerns arising out of heavily-contested local elections for Mayor and City Attorney in the City of San Diego. But what started as political gamesmanship has resulted in blatant violations of the SDMC and of Blackwater's constitutional and property rights.

Our federal courts were in large part created to protect citizens (including corporations) from such parochialism and a local political process gone awry. Federal intervention is even more appropriate here, because there are national security implications: if the politically motivated denial of Blackwater's rights succeeds, Blackwater will be irreparably harmed, and a contract between Blackwater and the United States Navy designed to train sailors to respond to attacks like the one on the USS Cole will be interfered with and the training of Navy sailors will be delayed, to the clear and obvious detriment to U.S. national security.

Starting on ***June 2, 2008***, Blackwater is contractually obligated to provide vocational training to members of the U. S. Navy on the proper use of firearms and other subjects, including marksmanship. To better conduct this training, Blackwater identified and leased a warehouse located at 7685 Siempre Viva Road in the Otay Mesa Development District in the City of San Diego (the "Otay Mesa Facility").

It is beyond serious dispute that Blackwater complied with all applicable rules and obtained the necessary permits and permission to occupy the Otay Mesa Facility and to utilize it to fulfill its Navy training contract. Numerous inspectors from the City of San Diego visited the Otay Mesa Facility to inspect Blackwater's construction conducted pursuant to specific building permits. Declaration of Brian Bonfiglio ¶¶ 11-12. The City ultimately approved Blackwater's occupation of the facility because, as Defendant Broughton reportedly admitted in a recent news story, Blackwater "complied with our municipal code and the California Building Code." *Id.* ¶ 27. That statement was entirely consistent with what the final City inspector sent to the facility was overheard saying, "Everything looks good. I can't *not* sign these plans." *Id.* ¶ 19. Thus, all that is left is for the City to perform the ministerial act of sending Blackwater its Certificate of Occupancy:

> The Building Official shall inspect the structure and if the Building Official finds no violations of the Land Development Code or other regulations that are enforced by the City's designated Code Enforcement Official, the Building Official ***shall*** issue a certificate of occupancy.

San Diego Municipal Code ("SDMC") § 129.0114 (entitled "Issuance of a Certificate of Occupancy") (emphasis added).

Unfortunately for Blackwater, this is an election year and several local politicians have attempted to trade Blackwater's statutory and constitutional rights for votes. After anti-war activists began clamoring that City leaders kick Blackwater out of town, the City Attorney—who is running for reelection in a hotly contested race on the June 3, 2008 ballot—answered their call. He issued an opinion on May 16, 2008 claiming that permits were not properly issued to

Blackwater (the "City Attorney Opinion"). Bonfiglio Decl. Ex. G. That Opinion is based on demonstrably inaccurate factual assumptions and legal analysis.[1]

Blackwater responded to the City Attorney's memorandum the following business day, May 19, 2008, addressing its response to the Mayor of the City of San Diego (who is also involved in a hotly contested reelection race) and pointing out the deficiencies in the City Attorney's analysis. *Id.* ¶ 25, Ex. H. This all culminated in a May 19, 2008 letter from Defendant Broughton to Mr. Bonfiglio of Blackwater stating that "[t]he City will not issue a certificate of occupancy for the [Otay Mesa Facility] pursuant to Section 129.0114 of the San Diego Municipal Code." *Id.* ¶ 26, Ex. I. Defendant Broughton relied upon the City Attorney's flawed analysis and suggested that Blackwater should pursue a "discretionary" process before the Planning Commission and the City Council and be subject to CEQA review.

The call for discretionary review violates the SDMC. The Code sets forth various processes for obtaining City approval for different types of projects. All of the permits and approvals Blackwater needed were "Process One" approvals. "Process One" approvals are nondiscretionary and obligatory. That is, if an entity meets the requirements outlined in the Code after inspection, the City *must* issue its permits and Certificate of Occupancy.[2] Blackwater complied with the provisions of San Diego's Municipal Code and now asks this Court to enforce them.

Moreover, the discretionary review referenced by Defendant Broughton in his letter is meaningless because it will, at a minimum, take months or years to complete, effectively killing the project, as the activists demanded. This is a clear deprivation of Blackwater's rights—especially since Blackwater was not given fair notice and opportunity to be heard before the City reversed course and arbitrarily decided not to send Blackwater its Certificate of Occupancy. Blackwater has also been subject to groundless disparate treatment since other similarly situated local entities were *not* required to follow the procedures now being imposed on Blackwater. The discriminatory manner in which the city is treating Blackwater (an out-of-state business) and not its local competitors is an Equal Protection violation and a *per se* dormant Commerce Clause violation.

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[1] Given the extraordinary recent report by the California Attorney General regarding "The Sunroad Building Project," it appears that the San Diego City Attorney has a pattern of issuing fatally flawed legal "opinions" to serve his political purposes.

[2] *See* SDMC §§ 112.0501, Diagram 112-05A; 129.0107; 129.0212; 129.0409.

Significantly, Blackwater is not required to show irreparable harm given that constitutional rights are at stake. But even if it were, Blackwater can show it will be *irreparably harmed* if it is unable to use the Otay Mesa Facility as a vocational school (including a target range) on ***June 2, 2008****, when performance under Blackwater's contract with the U.S. Navy is scheduled to begin.* Blackwater's reputation would likely be severely damaged, its $400 million contractual relationship with the Navy jeopardized, and its ability to train the country's armed forces severely compromised, which can have tragic consequences. As a result, Blackwater is entitled to a temporary restraining order preventing Defendants from interfering with its use of the Otay Mesa facility as a vocational facility (including a target range) because the issuance of a Certificate of Occupancy is, under the SDMC, a *purely ministerial matter.*

Furthermore, the balance of equities favors Blackwater. Although Blackwater's constitutional rights will be violated and it will be irreparably harmed if temporary relief is not granted, *Defendants will not suffer any damages or harm if temporary relief is granted.*

Thus, Blackwater requests a temporary restraining order enjoining Defendants from (1) enforcing the May 19, 2008 letter from Defendant Broughton purportedly refusing to issue a Certificate of Occupancy for the Otay Mesa Facility and/or refusing to allow Blackwater to occupy and utilize immediately the Otay

Mesa Facility, and (2) refusing to perform the ministerial task of sending Blackwater its Certificate of Occupancy for the Otay Mesa Facility pursuant to SDMC § 129.0114. Moreover, Blackwater requests this relief ***well in advance of June 2*** so that it can assure the Unites States Navy that Blackwater will satisfy its contractual obligations by providing Navy training at the Otay Mesa facility.

II. STATEMENT OF FACTS

Blackwater professionals are U.S. military and law-enforcement veterans dedicated to training military and law-enforcement personnel at home and protecting dignitaries abroad. One of Blackwater's longest-standing and most important contracts has been to provide anti-terrorism training for the men and women of the United States Navy. The genesis of this relationship was the attack on the USS Cole in 2000. There, while the USS Cole was stationary, a small manned watercraft, laced with explosives, approached the Cole. The crew of the small watercraft detonated explosives, killing 17 U.S. sailors, injuring 39, and causing substantial damage to the Cole.

After concluding that its sailors would have likely responded better if they been better trained in basic firearm usage and tactics (Bonfiglio Decl. ¶ 6), the Navy contracted with Blackwater to train its sailors on the safe, effective use of small personal weaponry and other apprehension techniques. For more than five years, Blackwater now has had a contractual relationship with the United States Navy that includes training sailors in certain skills necessary for their vocation in the modern world. Blackwater's training programs for sailors will teach a variety of skills, including marksmanship, assembly and disassembly of firearms, basic arrest and apprehension techniques, and proper safety for the latest state-of-the-art personal weaponry. This type of training is designed to improve our sailors' ability to protect our country, our Navy ships, and themselves. *Id.* ¶ 5.

Pursuant to this contractual relationship with the Navy, Blackwater is required to begin training a class of San Diego-area sailors on June 2, 2008. *Id.* ¶ 7. Blackwater located the facility in San Diego because the Navy contract required close proximity to Naval Base San Diego, the principal homeport of the Pacific Fleet, and the largest naval base in the western United States, which ports 35,000 sailors. Blackwater settled on a warehouse at 7685 Siempre Viva Road, in Otay Mesa. Blackwater chose Otay Mesa because of the ready availability of large, industrial buildings that can accommodate its needs, and because of the neighborhood's lack of residential properties.[3] *Id.* ¶ 8.

In developing the property, Blackwater initially decided to enter into a joint venture with a partnership named Southwest Law Enforcement Training Enterprises because of its capabilities. As was its right, in September 2007, Southwest Law Enforcement applied for and was granted a Building Permit to construct 44 feet of new partitions at the Otay Mesa facility.[4] *Id.* ¶ 10. Next, Blackwater's corporate affiliate Raven Development Group, LLC ("Raven"), which specializes in the development of training facilities, assisted Blackwater with its construction of and preparations for the Otay Mesa facility. For example, in February 2008, Raven filed two applications for Building Permits for the Otay Mesa facility. These permits were to support (1) installing two new air conditioning units and six exhaust fans, and (2) adding an indoor firing range. These permits were granted, additional air conditioning units and exhaust fans were installed, and construction of the indoor firing range began. *Id.* ¶ 11. As was its right, Blackwater continued through the process.[5]

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[3] A true and correct recent satellite image of a mile radius of the Otay Mesa Facility is attached as Exhibit A to the Bonfiglio Declaration, and picture of the view of across the street from the facility is attached as Exhibit X to the Bonfiglio Declaration.

[4] *See generally* SDMC § 112.0102(a)(3) (any person who can demonstrate a legal right, interest, or entitlement to the use of a property may file an application).

The inspection process went very smoothly. On March 21, 2008, the City's electrical inspector visited the facility and approved Blackwater's electrical infrastructure. On March 25, 2008, the San Diego Fire Inspector visited the facility and approved Blackwater's fire and safety permits. *Id.* ¶ 12. On April 29, 2008, the Chief Building Official of the City of San Diego (Defendant Ahmadi) scoured Blackwater's plans for the Otay Mesa Facility and found no unresolved issues. *Id.* ¶ 17-18. Final inspection of the Otay Mesa Facility was scheduled to take place the next day, April 30, 2008. *Id.* ¶ 18.

On April 30, 2008, the Building Official acting through the City's Structural Engineer conducted a thorough final inspection of the Otay Mesa Facility. *Id.* ¶ 19. The Structural Engineer told Mr. Bonfiglio that he was under instructions not to sign Blackwater's permits until calling headquarters. He called headquarters and was overheard stating, "Everything looks good. I can't *not* sign these plans." *Id.* He then signed Blackwater's permits and plans, completing the City's review process. *Id.*, Ex. U. He informed Blackwater that the Development Services Department would mail the actual paper "Certificate of Occupancy" in the next few weeks. *Id.*

After the City's final inspection, the issuance of a Certificate of Occupancy was purely ministerial, because, as a matter of law, "the Building Official *shall* issue a certificate of occupancy." SDMC 129.0114 (emphasis added). It was simply a matter of putting the document in the mail. It was *not* dependent on any discretionary review process or CEQA review that could take months or years.

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[5] *See generally* SDMC § 113.0103 ("Permit holder means an applicant who has been granted a permit, or the applicant's successor, or the person using the property that is subject to the permit.")

Blackwater's minor renovations, its use designation, and the property features are not the kind subject to discretionary review.

But the attitude toward the project began to change in late April 2008. Blackwater began seeing increasingly fervent e-mails from local activists stating that they wanted no "mercenaries" in San Diego, that Blackwater wanted to locate in Otay Mesa because it wanted to patrol the border, and that San Diegans should kick the North Carolina company out of California once and for all. *Id.* ¶ 15. *See also id.*, ¶ 34. On April 26, 2008, city councilman Scott Peters spoke at a rally and sharply criticized Blackwater. This is an election year in San Diego, and Election Day is June 3, 2008. Scott Peters is running for City Attorney in San Diego, against incumbent Michael Aguirre. *Id.* ¶ 16.

Soon the political atmosphere in the city reached a feverish pitch—and activists ratcheted up their tone considerably. An entity called the Courage Campaign asserted, "Now it's up to the Mayor and the San Diego City Council to stand up against these mercenaries setting up shop on in California." *Id.* ¶ 20 & Ex. C. The activists circulated a provincial-sounding petition to San Diego city officials. Those who signed stated their opposition "to the siting of any private military/mercenary training camp in the State of California." *Id.* ¶ 34 & Ex. N. California for Democracy encouraged its members to write Mayor Sanders "to take a stand and kick Blackwater of San Diego County for good." *Id.*, Ex. O. The activists have been audaciously blatant, stating, "we don't care if it's all legal . . . WE DON'T WANT BLACKWATER." *Id.* ¶ 35 & Ex. Z.

Steve Francis, an election challenger for Mayor with substantial resources, attacked the incumbent Mayor Jerry Sanders for his administration's issuance of the Blackwater permits. He stated, the "Blackwater permit issue raises more questions than it answers," and asked, "[w]hy was this matter not handled in an open and transparent way with public hearings and public comment period?"

Indeed, a headline read, "Blackwater Explodes into San Diego Mayoral Race." *Id.* ¶ 21 & Exs. D-E.

On May 5, Mayor Sanders sent a memorandum to Chief Operating Officer Jay Goldstone asking him to conduct an investigation into Blackwater's permits, and report back May 23. The Mayor also released this memorandum to the news media. *Id.* ¶ 22 & Ex. F. Next, without invitation from the Mayor, on May 16, 2008, City Attorney Aguirre weighed in. He released a memorandum to the new media stating that Blackwater should be required to go through the City's discretionary permitting procedure—even though Blackwater has not been able to identify any other vocational institutions or target ranges that have been required to follow the process now being imposed on Blackwater. *Id.* ¶ 23 & Ex. G. On the same day, in response to the media's questioning him about the City Attorney's memorandum, the Mayor announced he was issuing a "stop work" order for Blackwater's Otay Mesa Facility. *Id.* ¶ 24.

On May 19, 2008, Blackwater's attorneys wrote to the Mayor of San Diego—and copied the City Attorney—describing the numerous errors in the City Attorney's analysis. *Id.* ¶ 25 & Ex. H. On the same day, before the City had a chance to review the letter from Blackwater's attorneys, Defendant Broughton, Director of the City of San Diego's Development Services Department, wrote to Blackwater (Mr. Bonfiglio) stating that the City of San Diego "will not issue a certificate of occupancy" for the facility. The letter directed Blackwater not to use the "portions of the building identified for use as a shooting range and vocational/trade school…until a certificate of occupancy has been issued for this change of use." *Id.* ¶ 26 & Ex. I. Despite all the posturing by politicians running for re-election, that evening, KPBS reported that Defendant Broughton—when apparently asked why the required permits and approvals were originally granted without problem—answered, "I don't see that I would have had any other choice but to approve [Blackwater's permits and occupancy of the site] because it complied with our municipal code and the California Building Code." *Id.* ¶ 27 & Ex. J.

III. APPLICABLE STANDARD

The purpose of a preliminary injunction is to prevent irreparable injury to the plaintiff pending a final determination of the case. *Charles Schwab & Co., v. Hibernia Bank*, 665 F.Supp. 800, 812 (N.D. Cal. 1987). Its function is to preserve the status quo and prevent irreparable loss of rights prior to judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). The basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982); *Stanley v. University of So. Calif.*, 13 F.3d 1313, 1320 (9th Cir. 1994).

In the Ninth Circuit, temporary restraining orders are governed by the same standard as preliminary injunctions. *Jackson v. Walker*, 2007 WL 3173021 at *1, (E.D. Cal. October 29, 2007) (citing *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n. 2 (1977). Under what has been termed the "traditional standard," *Am. Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 965 (9th Cir. 1983), a party must establish that: "(1) the moving party will suffer irreparable injury if the relief is denied; (2) the moving party will probably prevail on the merits; (3) the balance of potential harm favors the moving party; and (4) the public interest favors granting relief." *Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987). Under the "alternative standard," the plaintiff meets its burden by demonstrating either (1) a combination of probable success and the possibility of irreparable injury or (2) serious questions as to these matters and the balance of hardships tips sharply in its favor. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-840 (9th Cir. 2001) (citing *Dr. Seuss Enters. v. Penguin Books, USA,* *Inc.*, 109 F.3d 1394, 1397, n.1 (9th Cir. 1997)). Where, as here, "the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits..." *State of Alaska ex rel. Yukon Flats School Dist. v. Native Village of Venetie*, 856 F.2d 1384, 1389 (9th Cir. 1988).

Regardless of the standard the Court applies, Blackwater easily meets its burden. Blackwater can demonstrate that it is likely to succeed on the merits. Though Blackwater need not show irreparable harm because constitutional rights are at stake, it nonetheless can do so. Furthermore, the balance of hardships tips sharply in Blackwater's favor—not in favor of the City, which will not be harmed in any way if injunctive relief is granted. Finally, the public interest will best be served by granting the relief Blackwater seeks and allowing it to train Navy sailors.

IV. ARGUMENT

A. This Court has Subject Matter Jurisdiction

In this action, Blackwater seeks to remedy the City of San Diego's violation of, *inter alia*, Blackwater's federal constitutional rights, pursuant to 42 U.S.C. § 1983. Accordingly, this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This Court also has diversity jurisdiction over this action under 28 U.S.C. § 1332 because complete diversity exists between Blackwater and Defendants and the amount in controversy in this case easily exceeds $75,000, exclusive of interest and costs. Complaint ¶ 10; Bonfiglio Decl., ¶ 31 (Blackwater risks losing Navy contract worth $400 million).

B. Blackwater Is Likely To Succeed On The Merits Of Its Claims

To establish the right to injunctive relief, a plaintiff must demonstrate a reasonable probability—not an overwhelming likelihood—of success on the merits. *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991). Blackwater clearly meets that burden here, if for no other reason than Defendant Broughton's correct statement that Blackwater "complied with our municipal code and the California Building Code." Bonfiglio Decl. ¶ 27 & Ex. J.

1. The Injunctive and Declaratory Relief Claims

Blackwater's claims for injunctive and declaratory relief depend upon the basic assertion that Blackwater is entitled to the issuance of a Certificate of Occupancy for the Otay Mesa Facility. Blackwater is likely to succeed on the merits of these claims because, as explained in Section I, the issuance of the Certificate Occupancy is a purely ministerial action the City "shall" take after, as occurred here, the Building Official has inspected the structure and found no violations. SDMC § 129.0114. Nothing in the SDMC permits, as happened here, a delay in issuance or a refusal to issue a Certificate of Occupancy for purely political or electoral considerations.[6]

As a matter of state law, "a city has a mandatory duty to issue a certificate of occupancy *once it has found* that a construction project has complied with all requirements." *Inland Empire Health Plan v. Superior Court*, 108 Cal. App. 4th 588, 593 (2003) (italics in original). "[T]he discretion to issue a building permit at all is much broader than the discretion which must be exercised in determining whether to issue a certificate of occupancy. Once the building permit has *been issued*, it cannot be de facto revoked by the simple expedient of never issuing the certificate of occupancy." *Thompson v. City of Lake Elsinore*, 18 Cal. App. 4th 49, 57-58 (1993) (italics in original).

[6] This is especially the case here because Blackwater's vested rights are implicated. Blackwater spent considerable sums legitimately obtaining its building permits, preparing its plans and performing the requisite construction—all within the governing Codes. "When an administrative decision affects a right which has been legitimately acquired or is otherwise 'vested,' and when that right is of a fundamental nature from the standpoint of its economic aspect . . . then a full and independent *judicial* review of that decision is indicated because '(t)he abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction.'" *Strumsky v. San Diego County Employees Retirement Ass'n,* 11 Cal.3d 28, 34 (1974) (citing and quoting *Bixby v. Pierno,* 4 Cal. 3d 130, 144 (1971)).

Furthermore, City officials cannot seriously contend that Blackwater should be required to undertake the discretionary review process suggested in the City Attorney Opinion (Bonfiglio Decl. Ex. G) and referenced in Defendant Broughton's May 19, 2008 letter (*id.,* Ex. I). The City Attorney's analysis depends upon two assertions: (1) that a vocational training school is not permitted in the Otay Mesa Development District without discretionary approval, and (2) that a target range, because it involves firing of guns within City limits, cannot be permitted without discretionary City Council approval. These claims are purely pretextual and meritless. They are pandering by the City Attorney to interest groups dead-set at "kick[ing] Blackwater out of San Diego County for good." *See* Bonfiglio Decl., Exs. N, O.

Vocational/trade schools, such as Blackwater's training facility, are permitted uses as of right in the Otay Mesa Development, pursuant to two *distinct* provisions of the San Diego Municipal Code. SDMC § 1517.0301(a)(1) specifically authorizes "[a]ll uses permitted in the IH-2-1 zone." (It further exempts facilities permitted in the IH-2-1 zone from obtaining any special permits, including an Otay Mesa Development Permit and states that such facilities' permits are subject to "Process One" ministerial review.) Vocational schools are permitted in the IH-2-1 zone, under SDMC § 131.0622, Table 131-06B. Thus, because Blackwater's facility, a vocational school, would be permitted in the IH-2-1 zone as a matter of right, it is similarly permissible, as a matter of right, in Otay Mesa. It is therefore not surprising that other vocational institutions exist in Otay Mesa and that they almost surely did not go through the city's discretionary review process.

A vocational school *also* is permissible in Otay Mesa under SDMC § 1517.0301(a)(8)(A). That section allows a trade school to operate that instructs in subjects *related* to a use *permitted* in the Industrial Subdistrict. The Industrial

Subdistrict allows for a wide variety of uses, including: (1) scientific research and development activities; (2) manufacturing plants requiring advance technology and skills; (3) facilities engaged in the production of experimental products; (4) general industrial uses (defined as "Establishments engaged in the . . . manufacturing . . . testing [or] servicing . . . of a wide range of products"); (4) storage warehouses; and (5) facilities involved in the wholesale distribution of various goods (including machinery, equipment, and supplies), pursuant to SDMC §§ 1517.0301(a)(2)(A), (2)(B), (2)(D), (3), (6)(A), (6)(B), *et seq*. Thus, if the subjects taught at Blackwater's vocational facility relate to *any* of these permissible uses, it is also permissible.

Blackwater's facility will instruct in a variety of subjects, all of which are related to permitted uses in the Otay Mesa Industrial Subdistrict. For example, Blackwater's facility will instruct on proper safety techniques for using the latest state-of-the-art personal weaponry. Bonfiglio Decl. ¶ 5. Because facilities engaged in researching and developing this weaponry are permitted in the subdistrict, a vocational school instructing end users on how to properly employ these devices would also be permissible. Blackwater's facility will also instruct students on how to assemble and disassemble firearms. *Id.* Because facilities engaged in the manufacturing of firearms and firearm components are permitted in the subdistrict, a vocational school instructing individuals on how to handle these items would also be permissible.[7]

Blackwater does not require approval by the City Council to train sailors on the proper use of firearms at the facility. SDMC § 53.10(d) clearly permits the discharge of firearms, without discretionary council approval or CEQA review, if the firearms are discharged at a facility instructing on the proper use of firearms

[7] As paragraph 32 and exhibits L and M of the Bonfiglio declaration indicate, defense contracting is clearly an established, permissible use in Otay Mesa.

and allowing individuals to engage in target practice. Such facilities are called target ranges. By exempting from special approval processes the places where San Diegans (and in this case, the men and women of the U.S. Navy) may practice gun safety and gun accuracy, the San Diego Municipal Code is consistent with the public policy of the State of California, which similarly exempts target ranges from even the strictest of gun laws.[8]

Defendant Broughton was correct: Blackwater complied the SDMC and the California Building Code. Bonfiglio Decl. ¶ 27 & Ex. J. Accordingly, Blackwater is entitled to the relief it seeks. See *Wal-Mart Stores, Inc. v. County of Clark*, 125 F. Supp. 2d 420, 427 (D. Nev. 1999) (granting preliminary injunction against Clark County, Nevada, finding that issuance of building permit was "a purely ministerial act"). See also *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1060 (9th Cir. 2007) (reversing denial of request to enjoin the city, city council members and the mayor to reinstate certain policies at a homeless shelter); *In Am. Fed'n of State, County and Mun. Employees v. City of Benton*, 513 F.3d 874, 883 (8th Cir. 2008) (affirming order enjoining the city, city council members and mayor to continue paying retiree health insurance premiums for certain city employees); *Hurwitt v. City of Oakland*, 247 F. Supp. 995, 1007-09 (C.D. Cal. 1965) (enjoining mayor, the city manager and the police chief from interfering with, or refusing to provide police protection for, a Vietnam Day parade).

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[8] *See, e.g.*, Cal. Pen. Code § 12026.2(a)(9) (exempting people traveling to target ranges from California's concealed weapon ban); Cal. Pen. Code § 12027(f) (exempting members of target ranges, whether public or private, from other concealed weapons restrictions); Cal. Pen. Code § 12031(b)(5) (exempting individuals at target ranges from being charged with felony for carrying a loaded weapon); Cal. Pen. Code § 12070(b)(9) (exempting target ranges that loan guns to individuals from California gun-transfer laws); Cal. Pen. Code § 12073(b)(7) (exempting target ranges from certain recordkeeping requirements); Cal. Pen. Code § 12280(k)(1)(C)(i) (exempting target ranges from California assault weapons ban); Cal. Pen. Code § 12285(c)(3) (exempting individuals at target ranges from certain assault weapon registration requirements); and Cal. Civ. Code § 3482.1 (exempting compliant shooting ranges from nuisance liability).

2. The Procedural Due Process Claims

Despite Blackwater's compliance with the City's procedures and applicable codes, the City has improperly and without good cause refused to issue a Certificate of Occupancy for Blackwater's training facility at Otay Mesa without allowing Blackwater a proper hearing on the merits. The City's actions have robbed Blackwater of its Constitutional right to predeprivation notice and a hearing. Essential principles of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)), and that such notice and opportunity be "at a meaningful time and in a meaningful manner." *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

"In situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking." *Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (citing *Loudermill*, 470 U.S. at 542). Due process generally requires "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Sanchez v. City of Santa Ana*, 915 F.2d 424, 429 (9th Cir. 1990) (citing *Loudermill*, 470 U.S. at 542). "These essential constitutional promises may not be eroded." *Hamdi*, 542 U.S. at 533.

It is true that in situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake, "or where the State is truly unable to anticipate and prevent a random deprivation of a liberty interest, postdeprivation remedies might satisfy due process." *Zinermon v. Burch*, 494 U.S. at 132 (citations omitted). Indeed, "[t]wo well-established exceptions [to the general rule of predeprivation hearing] exist: (1) where the property deprivation is the result of random and unauthorized conduct by a state employee such that meaningful predeprivation process is not possible; or (2) where protection of the public interest requires an immediate seizure of property without a hearing." *Sanchez*, 915 F.2d at 429 n.9. Neither of these exceptions apply here.

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of *liberty* and *property*." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972) (emphasis added). "Property interests ... are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits [*e.g.*, contracts]." *Id.* at 577.

The Ninth Circuit has held that state statutes providing for particular procedures amount to "entitlements" protected by due process. *See Parks v. Watson*, 716 F.2d 646, 656 (9th Cir. 1983) (citing *Mabey v. Reagan*, 537 F.2d 1036, 1042 (9th Cir. 1976)); *cf. Bills v. Henderson*, 631 F.2d 1287, 1298-99 (6th Cir.1980) (holding "every deviation from state procedures cannot be viewed as a federal constitutional violation" and citing *Mabey* as contrary authority). This means that, where the applicable governmental agency is left little to no discretion as to whether it grants a permit, the denial of that permit creates a protectable right. In *Parks*, the Oregon statute at issue (Or. Rev. Stat. § 271.120 (1981)) specified that in ruling on a particular petition, the agency "shall" determine three issues, and, if those three matters were determined in favor of the petition, the governing body "shall" grant the petition. In other words, "[o]nce the conditions are met the city lacks discretionary powers." *Parks,* 716 F.2d at 657. Thus, as the petitioner met the conditions but was denied the petition, the court held that the petitioner could bring a due process claim under 42 U.S.C. § 1983. *Id.* See also *Wal-Mart Stores*, 125 F. Supp. 2d at 427.

Here, Blackwater obtained all necessary Building Permits and approval for a Certificate of Occupancy, which would allow it to operate its training program at the Otay Mesa facility. The Building Official indicated that Blackwater was approved for a Certificate of Occupancy by stamping Blackwater's building plans with a Certificate of Occupancy stamp. Defendant Broughton has admitted as much. Accordingly, Blackwater possesses a vested and protected property right in the Certificate of Occupancy and the City's failure to issue such certificate is actionable under 42 U.S.C. § 1983.

3. The Equal Protection and Commerce Clause Claims

An equal protection claim may be brought by a "class of one" where the plaintiff does not allege membership in a group but alleges that he or she has been intentionally treated differently from similarly situated persons and that such treatment has no rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (no rational basis for requiring larger easement to connect to municipal water supply from one owner than from all other owners); *Forseth v. Village of Sussex*, 199 F.3d 363, 370-371 (7th Cir. 2000) (no rational basis for requiring conveyance of land to government official as a condition for development approval); *SeaRiver Maritime Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 679 (9th Cir. 2002).

Here, the City has questioned whether Blackwater's facility is genuinely vocational and whether vocational facilities are permissible in Otay Mesa. While the San Diego Municipal Code does not define "vocational school," the dictionary defines it as "a school offering instruction in one or more skilled or semiskilled trades or occupations"[9] And there are similar vocational facilities in Otay Mesa. Besides a truck-driving school and a beauty college, Southwestern College operates a Peace Officers Standards and Training (P.O.S.T.)-certified police

[9] *See* http://dictionary.reference.com/browse/vocational%20school (last accessed May 18, 2008).

academy at 8100 Gigantic Street, less than a quarter mile from Blackwater's Otay Mesa facility. Bonfiglio Decl. ¶ 9.

Furthermore, Blackwater has investigated other vocational institutions (including privately run institutions) and those featuring target ranges in the area. This investigation included talking to numerous City officials, asking them about the permit and approval process required of such other institutions, as well as physically viewing such institutions and reviewing available documentation about their practices and approvals. During this investigation, Blackwater was not able to identify a single other vocational institution or facility with a target range that was required to go through the discretionary process that Defendant Broughton's May 19, 2008 letter seeks to impose on Blackwater. *Id.* ¶¶ 30. Because of this disparate treatment, and because of the evidence showing that such disparate treatment was not based in law but instead was politically motivated, Blackwater is likely to prevail on its equal-protection claims.

The same is true of Blackwater's claims under the dormant Commerce Clause. "The Commerce Clause empowers Congress '[t]o regulate Commerce . . . among the several States,' Art. I, §8, cl. 3, and although its terms do not expressly restrain 'the several States' in any way, we have sensed a negative implication in the provision since the early days, see, e.g., *Cooley v. Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299, 318–319 (1852); cf. *Gibbons v. Ogden*, 9 Wheat. 1, 209 (1824) (Marshall, C. J.) (dictum). The modern law of what has come to be called the dormant Commerce Clause is driven by concern about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Kentucky v. Davis*, -- S.Ct. --, 2008 WL 2078187 (U.S., May 19, 2008) (citation and internal quotes omitted). Moreover, when a law favors in-state business over out-of-state competition, rigorous scrutiny is appropriate because the law is often the product of "simple economic protectionism." *Wyoming v. Oklahoma*, 502 U.S. 437, 454, (1992); *Philadelphia v. New Jersey*, 437 U.S. 617, 626-627 (1978).

Here, there this strong evidence that Defendants were answering the calls to kick Blackwater, an out-of-state business, out of California. *See* Bonfiglio Decl., ¶¶ 15, 20, 34 & Ex. C ("stand up against these mercenaries setting up shop in California") and Ex. N (petition sent to San Diego officials stating signatories' opposition "to the siting of any private military/mercenary training camp in the State of California."). Moreover, as discussed, Blackwater clearly is being treated differently than other local vocational institutions and target ranges, and Defendants have not articulated any proper basis for such discriminatory treatment—let alone a reason that could withstand the strict scrutiny required for situations like these. *See Kentucky v. Davis*, 2008 WL 2078187. Withholding issuance of Blackwater's Certificate of Occupancy when similar certificates have been routinely issued for in-state companies does not pass strict scrutiny here because it unduly burdens the interstate market and impermissibly causes a shift of business from out-of-state firms like Blackwater to in-state firms. *See McNeilus Truck and Manufacturing, Inc. v. State of Ohio*, 226 F.3d 429, 442-44 (6th Cir. 2000). As the exhibits attached to the Bonfiglio declaration show, Defendants are engaging in the type of discrimination forbidden by the dormant Commerce Clause – "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *See Kentucky v.* Davis, 2008 WL 2078187. Accordingly, Blackwater also is likely to prevail on its claim under the dormant Commerce Clause.

C. Blackwater Suffers An Immediate Threat Of Irreparable Harm

A temporary restraining order or preliminary injunction may be granted in instances where the moving party demonstrates a significant threat of irreparable injury. *Simula, Inc v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999).

As an initial matter, when a violation of constitutional rights is shown, most courts do not require any further showing of irreparable injury. *Brewer v. West Irondequoit Cent. School Dist.*, 212 F.3d 738, 744-45 (2nd Cir. 2000); see also *Associated Gen. Contractors of Calif. v. Coalition for Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991); *Gebin v. Mineta*, 239 F.Supp.2d 967, 969 (C.D. Cal. 2002) (plaintiffs sufficiently alleged a constitutional deprivation to warrant a finding of irreparable harm); *Dodge v. County of Orange*, 282 F.Supp.2d 41, 72 (S.D.N.Y. 2003) ("The alleged violation of a constitutional right suffices to show irreparable harm."); *American Civil Liberties Union of Kentucky v. McCreary County, Kentucky*, 354 F.3d 438, 445 (6th Cir. 2003) ("the Supreme Court held that when reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated") (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, given the violation of Blackwater's constitutional rights, it need show little—if any—threatened harm.

Nonetheless, Blackwater's harm would be irreparable if it is unable to meet the June 2, 2008 deadline for commencing training. It risks suffering significant harm to its reputation—harm that could jeopardize its contractual undertaking with the U.S. Navy and being unable to train the nation's sailors as contemplated. See *United Healthcare Ins. Co. v. AdvancePCS* , 316 F.3d 737, 741 (8th Cir. 2002) (damage to reputation can constitute irreparable injury, especially if damages would be uncertain or inadequate). This damage to its reputation could also result in the loss of other contracts and likely would damage Blackwater in an amount that is difficult, if not impossible, to quantify. Bonfiglio Decl. ¶ 31. Thus, Blackwater faces the threat of immediate and irreparable injury absent injunctive relief.

D. The Balance Of Hardships Tips Sharply In Blackwater's Favor

In assessing whether a temporary or preliminary injunction should issue, a district court must identify the harm that a preliminary injunction might cause the defendant and weigh it against plaintiff's threatened injury. The relative size and strength of each party are pertinent to this inquiry. *Sardi's Restaurant Corp. v. Sardie*, 755 F.2d 719, 726 (9th Cir. 1985). Here, the potential harm to Blackwater if a temporary restraining order (or preliminary injunction) is denied is significant for the reasons discussed above, whereas there is no harm or damage to the City if a temporary restraining order (or preliminary injunction) is granted.[10]

The Court must also consider the public interest as a factor in balancing the hardships when the public interest may be affected. *See Department of Parks & Rec. for State of California v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118, 1123 (9th Cir. 2006). Here, the public interest will best be served by granting the relief sought by Blackwater. The training facility that Blackwater is attempting to open is important to U.S. national security because it is designed to train U.S. Navy sailors in a variety of skills, including marksmanship. This type of training is expected to improve our sailors' ability to protect our county, our Navy ships, and themselves—and avoid a tragedy like the one that happened to the USS Cole.

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10 Even the City's reference to CEQA (as an attempt to make this an "environmental" matter) is misplaced. As the Bonfiglio Declaration makes clear (¶ 33 & Exs. P-T), the facility will use "green" ammunition that is lead-free. The target range's walls are made from the toughest steel available and reinforced by recycled rubber to absorb noise and projectiles. *Id.* The facility also has state-of-the art filtration systems. *Id.*

V. CONCLUSION

For the foregoing reasons, Blackwater respectfully requests that the Court grant its *Ex Parte* Application for Temporary Restraining Order and for Order to Show Cause Re Preliminary Injunction.

DATED: May 26, 2008

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba BLACKWATER WORLDWIDE, Plaintiff, v. KELLY BROUGHTON, in his capacity as Director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive, Defendants.	Case No. 08 CV 0926 H WMc **PROOF OF SERVICE** Date: TBD Time: TBD Location: Courtroom of the Honorable Marilyn L. Huff [*Ex Parte* Application For Temporary Restraining Order and Order To Show Cause Re: Preliminary Injunction and Memorandum Of Points and Authorities In Support Thereof, Declarations of Brian Bonfiglio and John Nadolenco, and Appendix of Authority Filed, and Proposed Orders Lodged Concurrently Herewith]

PROOF OF SERVICE
PERSONAL SERVICE

I am employed by Time Machine Network, Inc., 701 "B" St. #244, San Diego, CA 92101. I am over the age of 18 years; and I am not a party to this action. On May 27, 2008, I served a copy of the within document(s):

[PROPOSED] ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

[PROPOSED] TEMPORARY RESTRAINING ORDER;

PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DECLARATION OF BRIAN BONFIGLIO IN SUPPORT THEREOF

DECLARATION OF JOHN NADOLENCO IN SUPPORT THEREOF

APPENDIX OF SELECTED PROVISIONS OF THE SAN DIEGO MUNICIPAL CODE

(BY PERSONAL SERVICE) I delivered such documents to the offices of the addressee(s) listed below:

SEE ATTACHED SERVICE LIST

Executed on May 27, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

STEVE STEPHENS
Print Name

[signature]
Signature

Elizabeth Maland, San Diego City Clerk
202 "C" Street, 2nd Floor
San Diego, CA 92101

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2008 MAY 27 AM 8:59

CLERK, US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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VIA E-MAIL (FAX)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba BLACKWATER WORLDWIDE; Plaintiff, v. KELLY BROUGHTON, in his capacity as Director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive, Defendants.	Case No. 08 CV 0926 H (Wmc) **DECLARATION OF BRIAN BONFIGLIO IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER** Date: TBD Time: TBD Location: TBD [*Ex Parte* Application For Temporary Restraining Order and Order To Show Cause Re: Preliminary Injunction and Memorandum Of Points and Authorities In Support Thereof, Declaration of John Nadolenco, and Appendix of Authority Filed, and Proposed Orders Lodged Concurrently Herewith]

CR

I, Brian Bonfiglio, declare as follows:

1. I am a Vice-President for Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater"). I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I began my career with the U.S. Marines Corp, and was on active duty from 1983 through 1991. From 1997 through 2001, I worked for another defense contractor, named DynCorp. As does the current administration, the Clinton administration sought expertise of outside contractors for overseas warzone assignments requiring special skills. While working for DynCorp during the United States' peacekeeping mission in Sarajevo, I served as the Agent-in-Charge of the Protective Detail for the U.S. Ambassador.

3. Blackwater Worldwide is a firm that specializes in training military law-enforcement personnel and protecting dignitaries abroad. I have been with Blackwater for five years. I began as Program Manager for the Protective Detail of Director of Reconstruction and Humanitarian Assistance, (later Ambassador) L. Paul Bremer, in Baghdad, Iraq. I then became Vice-President in charge of State Department programs.

4. Currently, I serve as Vice-President of Western Operations for Blackwater Worldwide. One of my primary duties has been overseeing the location and permitting and approval process for Blackwater's San Diego (Otay Mesa) facility.

5. Blackwater has an ongoing contractual relationship with the United States Navy that includes training sailors in certain skills necessary for the vocation in the modern world. Blackwater's training programs for sailors will teach a variety of skills, including marksmanship, assembly and disassembly of firearms, basic arrest, anti-terrorism, and apprehension techniques, and proper safety for the latest state-of-the-art personal weaponry. This type of training is

designed to improve our sailors' ability to protect our country, our Navy ships, and themselves.

6. The genesis of this contract was the attack on the USS Cole in 2000. There, while the USS Cole was stationary, a small manned watercraft, laced with explosives, approached the Cole. The crew of the small watercraft detonated explosives, killing 17 U.S. sailors, injuring 39, and causing substantial damage to the Cole. The Navy became increasingly concerned with teaching all sailors specialized firearms and emergency apprehension techniques after this incident.

7. Blackwater has already trained over 100,000 U.S. sailors under this contract with the Navy. Pursuant to the contract, Blackwater is required to begin training a class of San Diego-based sailors on June 2, 2008.

8. Blackwater located its facility in San Diego because the Navy contract requires that the training be conducted within close proximity to Naval Base San Diego, the principal homeport of the Pacific Fleet, and the largest naval base in the western United States, which ports 35,000 sailors. We settled on a warehouse at 7685 Siempre Viva Road, in Otay Mesa. Blackwater chose Otay Mesa because of the ready availability of large, industrial buildings that can accommodate our needs, and because of the neighborhood's lack of residential properties. Attached as Exhibit A is a true and correct map of a mile radius of the facility. Attached as Exhibit X is a true and correct picture of the view of across the street from the facility.

9. There are several vocational facilities in Otay Mesa. For example, Avance Beauty College is located at 750 Breyer Street. Momax Truck Driving School is located at 2222 Verus Street. And on the campus of Southwestern College is a Peace Officers Standards and Training-certified police academy, at 8100 Gigantic Street – less than a quarter mile from Blackwater's Otay Mesa facility. Attached as Exhibit B is a true and correct copy of an advertisement for this police academy.

10. In developing its Otay Mesa property, Blackwater initially decided to enter into a joint venture with a partnership named Southwest Law Enforcement Training Enterprises, because of its capabilities. In September 2007, Southwest Law Enforcement applied for and was granted a Building Permit to construct 44 feet of new partitions at the Otay Mesa facility.

11. Next, Blackwater's corporate affiliate Raven Development Group, which specializes in the development of training facilities, assisted Blackwater with its construction of and preparations for the Otay Mesa facility. For example, in February 2008, Raven filed two applications for Building Permits for the Otay Mesa facility. The permits were to support (1) installing two new air conditioning units and six exhaust fans, and (2) adding an indoor firing range. These permits were granted, and Blackwater, assisted by Raven, began installing the additional air conditioning units and exhaust fans and constructing the indoor firing range.

12. The inspection process went very smoothly. On March 21, 2008, the City's electrical inspector visited the facility and approved our electrical infrastructure. On March 25, 2008, the San Diego Fire Inspector visited the facility and approved our fire and safety permits.

13. As I had done with every inspector at the facility, I met with these two individuals, identified myself as working for Blackwater, and provided each with my Blackwater business card. Our staff typically wears Blackwater T- or polo shirts, and each time I met an inspector, I was wearing one or the other.

14. By late spring 2008, after arms-length negotiations, Blackwater and Southwest could not come to mutually agreeable terms, and parted company.

15. The attitude toward the project began to change in late April 2008. We began seeing increasingly fervent e-mails from local activists stating that they wanted no "mercenaries" in San Diego, alleging that Blackwater wanted to locate in Otay Mesa for various fanatical reasons that ranged from taking over the border patrol to building a cross-border smuggling tunnel. These e-mails proclaimed that

San Diegans should kick the North Carolina company out of California once and for all. The self-proclaimed leader of these activists is Ray Lutz, who is running for California Assembly.

16. On April 26, 2008, San Diego City Councilman Scott Peters spoke at a rally and sharply criticized Blackwater. This is an Election Year in San Diego, and Election Day is June 2. Scott Peters is running for City Attorney in San Diego, against the incumbent Michael Aguirre.

17. Two days later, I received a phone call from the San Diego Development Services department, telling me that Chief Building Official Afsaneh Ahmadi wanted to meet with me to discuss our plans and permits. We set the meeting for April 29.

18. During our April 29 meeting, Ms. Ahmadi informed us that the city had lost Blackwater's plans. She then asked to take ours, which bore the stamped approvals or signatures from city inspectors. Our contractor replied that she could look at our plans, but that we would have to make a copy for her and send them to her. Ahmadi then began scouring our plans. Ultimately, she found no unresolved issues, and we scheduled the city's final inspection for the next day.

19. On April 30, the city's Structural Engineer inspected thoroughly the facility. He informed Blackwater he was under instructions not to sign our permits until calling headquarters. On the call, he was overheard saying, "Everything looks good. I can't *not* sign these plans." He then signed our permits and plans, completing the city's review process. He informed us that the Development Services department would mail to us our actual paper "Certificate of Occupancy" in the next few weeks. Attached as Exhibit U are true and correct copies of our City of San Diego Inspection Records, showing the inspector's signature for our Certificate of Occupancy.

20. The political atmosphere in the city then reached a feverish pitch. The activists ratcheted up their tone considerably. The Courage Campaign issued

a statement that read, "Now it's up to the Mayor and the San Diego City Council to stand up against these mercenaries setting up shop in California." Attached as Exhibit C is a true and correct copy of an e-mail from the Courage Campaign.

21. Steve Francis, a candidate for Mayor with substantial resources, attacked the incumbent Mayor Jerry Sanders for his administration's issuance of the Blackwater permits. He stated, the "Blackwater permit issue raises more questions than it answers," and asked, "[w]hy was this matter not handled in an open and transparent way with public hearings and public comment period?" Indeed, a headline read, "Blackwater Explodes into San Diego Mayoral Race." Attached as Exhibit D is a true and correct copy of this story. Exhibit E is a true and correct copy of a story detailing how Mr. Francis successfully wooed supporters with his opposition of our facility.

22. On May 5, Mayor Sanders sent a memorandum to the city's Chief Operating Officer, Jay Goldstone, asking him to conduct an investigation into our permits, and report back May 23. The Mayor also released this memorandum to the press. Attached as Exhibit F is a true and correct copy of this memorandum.

23. Next, without invitation from the Mayor, on May 16 City Attorney Aguirre weighed in on the subject. He released a memorandum to the press stating that Blackwater should be made to go through the city's discretionary permitting procedure. Attached as Exhibit G is a true and correct copy of the City Attorney's memorandum.

24. On the same day, in response to questioning from the media about the City Attorney's memorandum, the Mayor announced he was issuing a "stop work" order for our facility.

25. On May 19, 2008, our attorneys wrote a letter to the Mayor of San Diego—and copied the City Attorney—describing the numerous errors and flaws in the City Attorney's analysis. I personally delivered this letter to the various city hall offices. Attached as Exhibit H is a true and correct copy of this letter.

26. On the same day, before city staff or elected officials had a chance to review our letter, the Development Services director, Kelly Broughton, wrote me a letter stating the City of San Diego "will not issue a certificate of occupancy" for the facility. The letter directed Blackwater not to use the "portions of the building identified for use as a shooting range and vocational/trade school…until a certificate of occupancy has been issued for this change of use." Attached as Exhibit I is a true and correct copy of this letter.

27. That evening, KPBS reported that Mr. Broughton had stated, "I don't see that I would have had any other choice but to approve [Blackwater's permits and occupancy of the site] because it complied with our municipal code and the California Building Code." Attached as Exhibit J is a true and correct copy of this media report.

28. Getting mixed messages, and fearing our May 19, 2008 letter may have crossed with Mr. Broughton's May 19, 2008 letter and not been reviewed, we sent another letter to Mr. Broughton on May 20, 2008. A copy of the May 20, 2008 letter is attached as Exhibit K.

29. Despite these requests, the City still refuses to send Blackwater our Certificate of Occupancy. Despite San Diego's Chief Operating Officer asking the City Attorney to look into to the factual and legal corrections in Blackwater's two letters, the City Attorney has not responded. Attached as Exhibit Y is a true and correct copy of the Chief Operating Officer's letter.

30. Since I have been primarily responsible for ensuring that the Otay Mesa is open and operational by the June 2, 2008 deadline, I have done a fair amount of investigation into other local vocational institutions, including privately run institutions, and those featuring target ranges. Our investigation included talking to numerous City officials, asking them about the permit and approval process required of such other institutions, as well as physically viewing such institution and reviewing available documentation about their practices and

approvals. During the investigation, I was not able to identify a single other vocational institution or target range that was required to go through the discretionary process that Mr. Broughton's May 19, 2008 letter seeks to impose on Blackwater. Under my direction, we researched two of the other major operational facilities in San Diego that feature target ranges (American Shooting Center at 5590 Ruffin Road and Discount Gun Mart and Indoor Range at 1510 Morena Boulevard) and were informed by City of San Diego employees that there were no records of any discretionary permits for these properties. The paperwork further indicated that these facilities were permitted as vocational schools. Attached as Exhibits V and W are true and correct copies of the permit history of these facilities.

31. If Blackwater is unable to meet the June 2, 2008 deadline for opening its training facility, it risks losing a $400 million contract with the Navy. It risks suffering grave reputational harm with the Department of Defense, which may well conclude that doing business with Blackwater is not worth the hassle in light of the prejudices, however unjustified, that Blackwater faces in local communities. This could result in Blackwater not being able to win future contracts, an incalculable loss. Also, losing the Navy contract would result in substantial stigma for Blackwater in Southern California, a major operational area and source of revenue for the company. Allowing the city's actions to go unchecked could also result in huge future additional pre-contracting costs. Specifically, if Blackwater is unfairly sullied in this community, extra precautions would be necessary in every community in which Blackwater proposes to locate, to ensure that its gets treated fairly. These damages are difficult, if not impossible, to quantify. Finally, if Blackwater's Otay facility cannot open on June 2, Blackwater risks being unable to satisfy our contractual undertaking to the Navy and, thus, being unable to train the nation's sailors as contemplated.

32. There have been some inaccurate allegations by activists or city officials in the media. One has been the implication that there are no defense contractors in Otay Mesa. Just next-door to our location is a facility that produces realistic models of foreign military hardware. Attached as Exhibits L and M are true and correct pictures of some of the hardware produced/located at the facility.

33. Any concerns that the facility poses environmental concerns are also unfounded. The facility will use "green" ammunition, which is made from tungsten and is lead-free. Blackwater contracted with a HEPA-certified firm to periodically inspect and clean the target range. The target range is fully indoors and fully enclosed. Its walls are made from some of the toughest (AR-500) steel available, and further reinforced by layers of recycled rubber to absorb projectiles and noise. Attached as Exhibit P is a true and correct picture of the target range. The facility is equipped with state-of-the-art air filtration and circulation systems. Attached as Exhibit Q and R are true and correct pictures of the air and ventilation systems. Other interior features include a standard, basic classroom. Attached as Exhibit S is a true and correct picture of the classroom. The outside of the facility is clean, neat, and unobtrusive. Attached as Exhibit T is a true and correct picture of the facility exterior.

34. Much of the activists' rhetoric has been focused on keeping Blackwater out of California. The very petition on the website, www.stopblackwater.net (run by Assembly candidate Ray Lutz), which was circulated to San Diego elected officials, reads, "I stand in opposition to the siting of any private military/mercenary training camp in the State of California." Attached as Exhibit N is a true and correct copy of the petition. California for Democracy posted a similar parochial statement, asking its members to write Mayor Sanders "to take a stand and kick Blackwater of San Diego County for good." Attached as Exhibit O is a true and correct copy of the relevant pages from their web site.

35. The activists have been very open about their designs. One of their latest missives stated very plainly, "We don't care if it's all legal and hunky dory, WE DON'T WANT BLACKWATER." (Emphasis in the original). Attached as Exhibit Z is a true and correct copy of this e-mail.

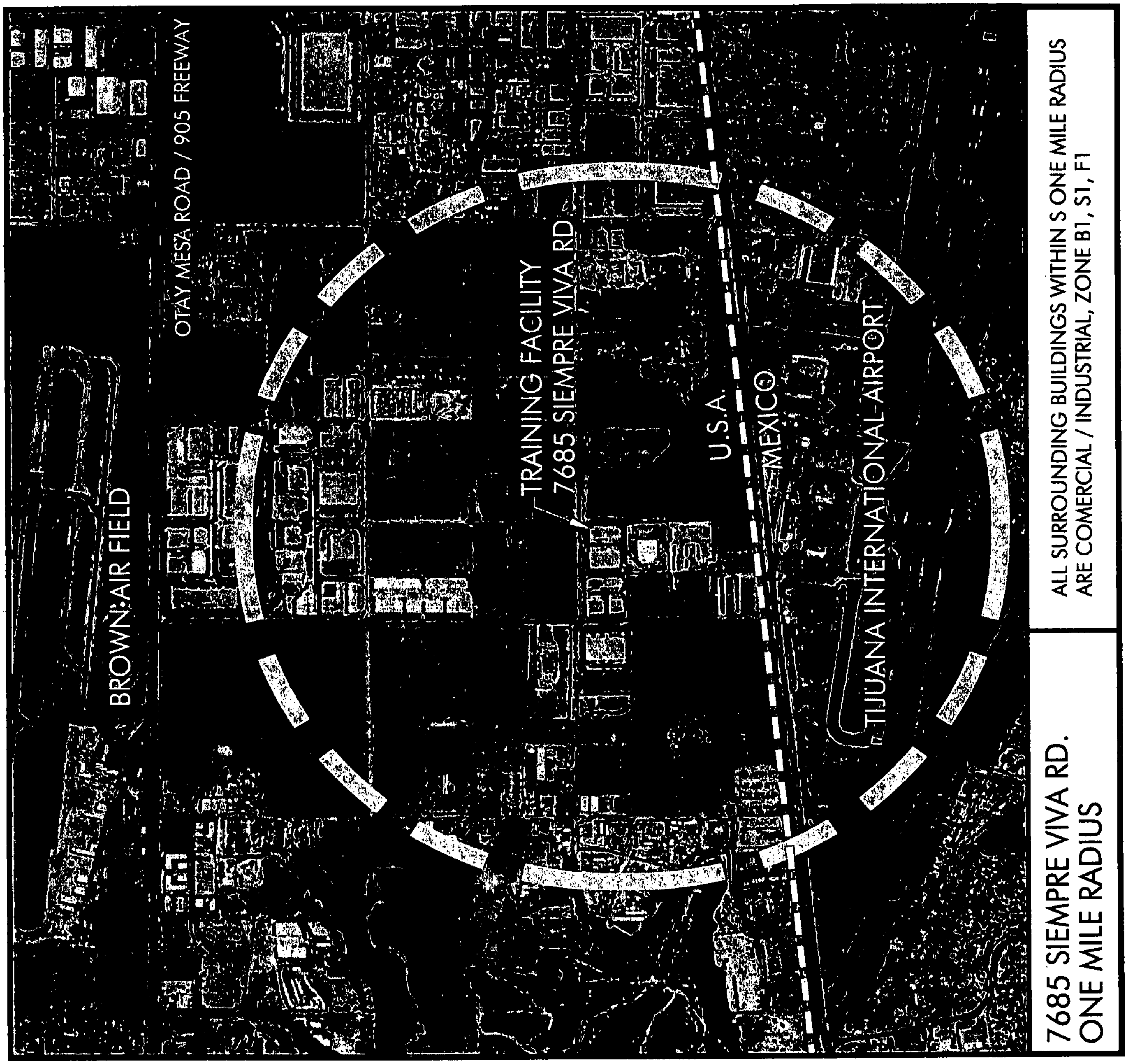
I declare under penalty of perjury that the foregoing is true and correct.

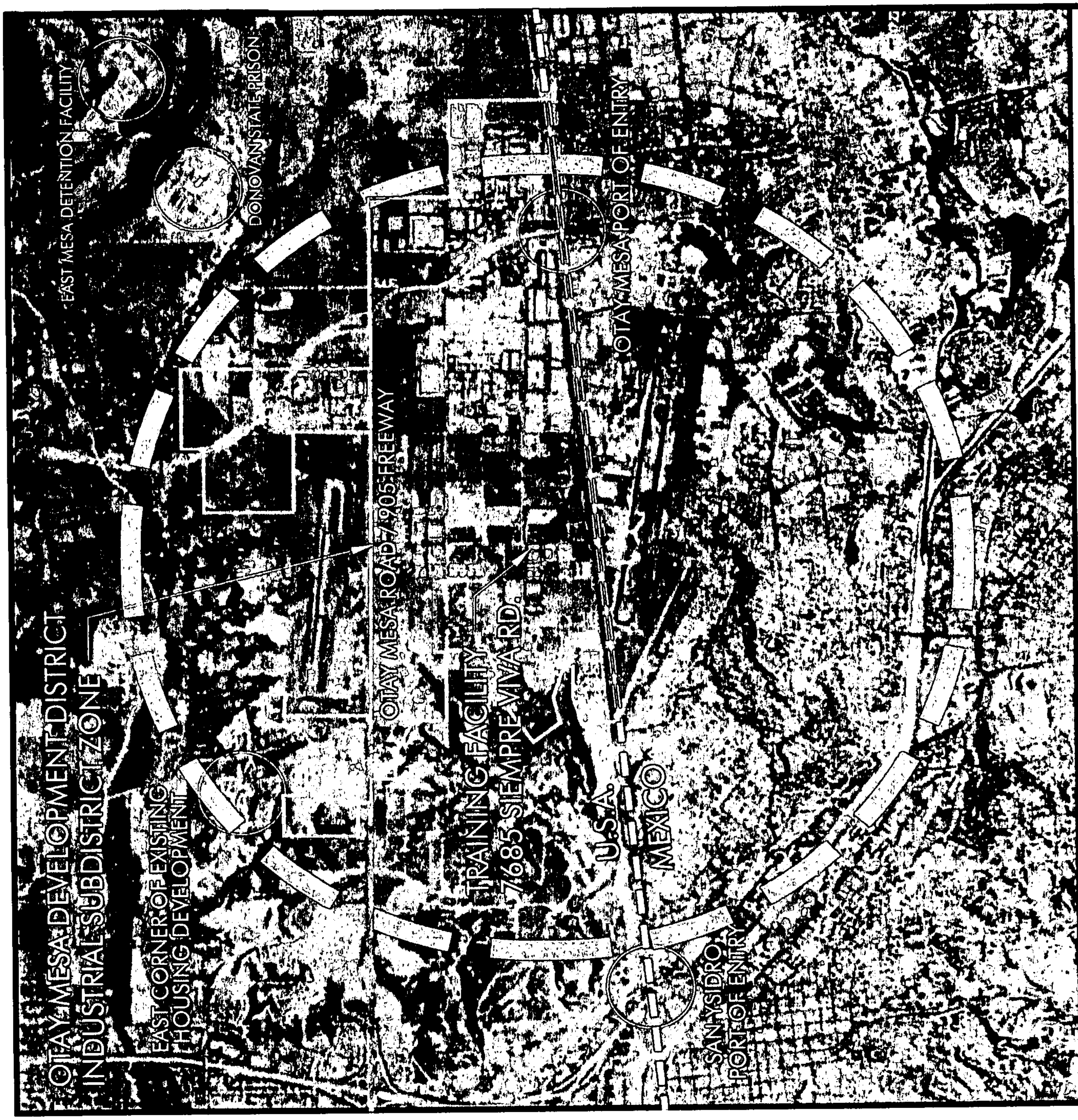
Executed this 26th day of May 2008 in San Diego, CA.

BRIAN BONFIGLIO

Exhibit	Description
A	One-mile radius of facility
B	Advertisement for Southwestern College
C	Email from Courage Campaign
D	Article with Francis quote: "Blackwater permit issue raised more questions . . ."
E	Article entitled "Reconsidering Steve Francis"
F	May 5 Memorandum from Mayor to COO Goldstone
G	City Attorney's May 16 Memorandum
H	Mayer Brown May 19 Letter to Mayor
I	Broughton's May 19 Letter to Blackwater
J	May 19 KPBS Report with Broughton quote
K	Dymott's May 20 letter to Broughton
L	Pictures of military hardware at next door facility
M	Pictures of military hardware at next door facility
N	Petition from www.stopblackwater.net
O	California for Democracy website re "to take a stand "
P	Picture of target range
Q	Picture of air and ventilation systems
R	Picture of air and ventilation systems
S	Picture of classroom
T	Picture of facility exterior
U	Inspection Records
V	Permit History for Ruffin Road
W	Permit History for Morena Boulevard
X	View of across the street from the facility
Y	Letter from COO Goldstone
Z	E-mail from activists, "We don't care if it's all legal . . ."

EXHIBIT A


BROWN AIR FIELD
OTAY MESA ROAD / 905 FREEWAY
TRAINING FACILITY
7685 SIEMPRE VIVA RD
U.S.A.
MEXICO
TIJUANA INTERNATIONAL AIRPORT
7685 SIEMPRE VIVA RD.
ONE MILE RADIUS
ALL SURROUNDING BUILDINGS WITHIN S ONE MILE RADIUS
ARE COMERCIAL / INDUSTRIAL, ZONE B1, S1, F1


OTAY MESA DEVELOPMENT DISTRICT
INDUSTRIAL SUBDISTRICT ZONE
EAST CORNER OF EXISTING
HOUSING DEVELOPMENT
EAST MESA DETENTION FACILITY
DONOVAN STATE PRISON
OTAY MESA ROAD / 905 FREEWAY
TRAINING FACILITY
7685 SIEMPRE VIVA RD.
U.S.A.
MEXICO
OTAY MESA PORT OF ENTRY
SAN YSIDRO
PORT OF ENTRY

7685 SIEMPRE VIVA RD.
THREE MILE RADIUS

PHOTOGRAPH DEPECTING 3 MILE RADIUS

Police Academy

If you have considered becoming a Peace Officer or Deputy Sheriff, the Southwestern College Police Academy offers the opportunity to train part-time, so education is gained and you as a peace officer candidate will qualify as a "lateral entry" candidate with the P.O.S.T. Basic Course Certification.

- ►Earn $50K to 60K per year to start
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- ►Earn 24 units of college credit
- ►Training classes are held Tues/Wed/Thurs nights and all day Saturday
- ►Students may qualify for Financial Aid or Tuition Assistance

Let Southwestern College prepare you for a career in Law Enforcement. Join our team and start training for your NEW CAREER NOW!

The Southwestern College Police Academy is fully sanctioned by the Commission on Peace Officer Standards and Training (P.O.S.T.) of California

For more information and application contact the Police Academy Office at (619) 482-6462 or visit our website for an online application:
www.swccd.edu/policeacademy

Visit our state-of-the-art
Higher Education Center @ Otay Mesa
Southwestern College Police Academy
8100 Gigantic Street, # 4315
San Diego, CA 92154

TRAINING TOMORROW'S OFFICERS

SOUTHWESTERN COMMUNITY COLLEGE BASIC POLICE ACADEMY

PRESENTS - MODULAR ACADEMY LEVEL-I

Southwestern College – Otay Mesa Campus, Office 4315
8100 Gigantic Street, San Diego, California 92154

July 12, 2008 – December 13, 2008

DESCRIPTION: This 22 week, 441 hour Module-I Law Enforcement Academy is a discipline / accountability oriented program with emphasis on Emergency Vehicle Operations, Tactical/Combat Firearms training, Officer Survival and Arrest & Control. In addition, there will be inspections, training in formations, facing movements & marching, and scenario training. Trainees will attend the Academy in full uniform and are required to purchase their own uniforms and physical training gear along with other miscellaneous supplies.

INSTRUCTORS: All instructors are POST certified law enforcement officers from the San Diego County area and Southwestern Community College.

PREREQUISITE: Completion of Modular Academy Level II. **Participants should be in good physical condition.**

PRESENTATION DATES & HOURS: The course sessions are Tuesday, Wednesday and Thursday nights from 1800 hours to 2200 hours and every Saturday from 0700 hours to 1700 hours.

LOCATION: This course will be presented at the Southwestern College Otay Mesa Campus located at 8100 Gigantic Street, San Diego, CA 92154.

REQUIRED EQUIPMENT: An equipment list will be provided upon acceptance to the course. Participants will be expected to have all required uniforms and equipment by the orientation date. Physical Training gear will be purchased at orientation.

COURSE ENROLLMENT: This course is presented as part of the Regular Basic Academy. Acceptance will be based on test results and local agency requirements.

Please contact Liz Valdez at (619) 482-6462 for application and entry testing information or download the application and information from our webpage at www.swccd.edu/policeacademy. Testing and interview details will be given after the application process is completed.

EXHIBIT C

----- Original Message -----
From:
To: LOS-Government
Sent: Tue Apr 29 16:21:10 2008
Subject: FW: Mercenaries in California? Blackwater is back.

Just received this timely email

From: Rick Jacobs, Courage Campaign [mailto:info@couragecampaign.org]
Sent: Tuesday, April 29, 2008 2:18 PM
To:
Subject: Mercenaries in California? Blackwater is back.

<http://www.couragecampaign.org/page/m/6737222006ec2feb/bL8GPr/VEsH/>
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsE/>

Dear

Blackwater is back in California.
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsF/>

Just a few months after the courageous people of Potrero kicked Blackwater out of their small town on the California border, Blackwater has announced plans to open a 61,600 square-foot "training facility" in San Diego just THREE blocks from Mexican border.

In other words, Blackwater is using your tax dollars on a mercenary war in Iraq -- $320 million paid so far, over 60% in no-bid contracts -- to subsidize building a base of operations inside California.

Blackwater's border bait-and-switch has shocked the citizens of San Diego. Shortly before pulling their plans on Potrero, the private military contractor quietly used a shell company called "Southwest Law Enforcement" to gain city permits for a "vocational trade school" a stone's throw from the Tijuana Airport. While Blackwater denies that this deception is a trojan horse to land border security contracts from the federal government before George W. Bush leaves office, the ominous writing is on California's wall.

What will it take to stop Blackwater for good in California and Iraq? Local and national pressure. This time, the Courage Campaign plans to fight a two-front battle against Blackwater -- on the border in San Diego and in the halls of Congress.

To block Blackwater in California for good, we need to put them out of business in Iraq forever. That's why we're supporting Rep. Jan Schakowsky's "Stop Outsourcing Security Act" (H.R. 4102), which would phase out private security companies like Blackwater in Iraq and Afghanistan. An identical bill in the Senate (S. 2398) has been co-sponsored by Senator Hillary Clinton.

If Senator Clinton can call for Blackwater to be banned from Iraq, so can Speaker Nancy Pelosi.
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsC/>

And so can you. Please join us now in asking Speaker Pelosi -- California's most powerful member of Congress -- to take leadership by supporting the "Stop Outsourcing Security Act." On Monday, we will deliver thousands of your signatures to Speaker Pelosi's offices in Washington D.C. and San Francisco. Please add your signature and spread the word today:
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsD/>

http://www.couragecampaign.org/BanBlackwater
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsA/>

Rep. Schakowsky's bill in the House requires that within six months of passage, "the secretary of State shall ensure that all personnel at any United States diplomatic or consular mission in Iraq are provided security services only by federal government personnel."

Senator Clinton was unequivocal in her support for this ground-breaking legislation:

"From this war's very beginning, this administration has permitted thousands of heavily-armed military contractors to march through Iraq without any law or court to rein them in or hold them accountable. These private security contractors have been reckless and have compromised our mission in Iraq. The time to show these contractors the door is long past due. We need to stop filling the coffers of contractors in Iraq, and make sure that armed personnel in Iraq are fully accountable to the U.S. government and follow the chain of command."

The bill is also gaining momentum in the progressive grassroots and netroots as a foundational piece of the "Responsible Plan to End the War in Iraq" -- the people-powered plan we told you about a few weeks ago that has now been endorsed by 55 congressional candidates for Congress.

This Thursday, May 1, True Majority will deliver the "Responsible Plan" to members of Congress across America on the fifth anniversary of President Bush's "Mission Accomplished" declaration. On Monday, May 5, we'll follow up by delivering your signatures to Speaker Pelosi's offices in Washington D.C. and San Francisco.

With funding for the war in Iraq being considered by Congress right now, there's no better time to shine a light on Blackwater. If we can convince Speaker Pelosi to stop Blackwater from privatizing national security with our tax dollars, it could be the beginning of the end for Blackwater in Iraq. And California.
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsB/>

Please take a stand and spread the word today, before we deliver your signatures to Speaker Pelosi on Monday:
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsO/>

http://www.couragecampaign.org/BanBlackwater
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsP/>

Time is not on our side. Blackwater claims that it may be able to begin operations in San Diego as early as this summer. Meanwhile, the Iraq contract that Blackwater is operating under -- the State Department's "Worldwide Personal Protective Services" contract to guard infrastructure and diplomats -- is up for renewal in May.

We need to go on offense now, locally and nationally, to stop the outsourcing of our security operations in Iraq and on the Mexican border. That means blocking Blackwater from San Diego and banning Blackwater from Iraq before it's too late.

Please forward this email to your friends today and ask them to sign our petition to Speaker Pelosi before Monday at 9 a.m.

Thank you for everything you are doing to make 2008 a new era for progressive politics in California. And the world.

Rick Jacobs
Chair

P.S. The people of Potrero spoke out loud and clear that Blackwater was not welcome in San Diego County. Now it's up to the Mayor and the San Diego City Council to stand up against these mercenaries setting up shop on in California. In a few days, we'll give you an update on the battle brewing over Blackwater's new base on the border and what you can do to stop it.

But first, we need your help to ban Blackwater from Iraq. Please sign the petition to Speaker Pelosi now:

http://www.couragecampaign.org/BanBlackwater
<http://www.couragecampaign.org/page/m/6737222006ec2feb/59Hmzf/VEsHBQ==
/>

....

The Courage Campaign is an independent political committee and online organizing network empowering grassroots and netroots activists to build a progressive California. In 2008, the Courage Campaign will catalyze action to increase California's importance in the race for the White House, hold our elected officials accountable, and block Blackwater from building a base on our border.

Please consider making a contribution to the Courage Campaign:

<http://www.couragecampaign.org/page/m/6737222006ec2feb/RtlzYp/VEsHBA==
/>

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Blackwater Explodes into San Diego Mayoral Race

by: Lucas O'Connor
Wed May 07, 2008 at 21:06:15 PM PDT

Full disclosure: I work for the Courage Campaign

Blackwater made its way into the big time here in San Diego today, with mayoral hopeful Steve Francis picking up on the issue and savagely beating Jerry Sanders over the head with it. There's no love lost between these two (as you may remember or enjoy viewing), and they know that whether it's on June 3 or in the November runoff, they're in direct competition with each other for roughly the same political real estate in this mayoral race. So when Francis is kind enough to adopt the Courage Campaign frame in his press release entitled *Blackwater Permit Issue Raises Serious Questions*. Which makes Blackwater a defining issue as both Republicans try to stake a claim to the center-left.

Full text and further analysis on the flip.

Lucas O'Connor :: Blackwater Explodes into San Diego Mayoral Race

> "Once again, it appears that the too-cozy relationship between Mayor Sanders' administration and his lobbyist supporters may have led to an outcome that is not in the best interests of the people of San Diego. And once again, we see the corrosive effects of too much secrecy and not enough transparency in the dealings of our government. Right now, the Blackwater permit issue raises more questions than it answers. In light of the Blackwater West controversy last year, the fact that permits were sought using the names of Blackwater affiliates and not the Blackwater name itself raises serious questions. Was this a deliberate deception? How was a permit for a "vocational training school" given to a paramilitary training facility? Why was this matter not handled in an open and transparent way with public hearings and public comment period? Did Sanders' supporter and lobbyist firm Carpi and Clay receive preferential treatment for their client, Blackwater? How many times did Mayor Sanders and/or his top lieutenants meet with Carpi and Clay in 2007 and 2008 and what were the topics discussed at those meetings? What did Mayor Sanders know about the current permit issue and when did he know it? Due to the long track record of this Mayor in regards to special access for his lobbyist supporters, it is simply not credible for his Administration to investigate itself. I call on Mayor Sanders to invite an external investigation into this matter so that the citizens can be assured of the integrity of the process."

Francis reinforces some issues and broaches a few more in this release. First of all, the Carpi and Clay connection. The local lobbyists are playing about 18 different sides in this mess. Among their many local clients are the County and Port of San Diego. Nikki Clay was a registered Blackwater lobbyist during 2006 and 2007 while they were pursuing their Potrero facility. Her husband Ben Clay was recently nominated by Mayor Sanders to the local Stadium Board. Both are campaign contributors to Sanders' campaign and PAC in the past. One of the major criticisms of Sanders is that he's far too beholden to contributors and far too cozy with lobbyists. So that's the new.

The reinforced is that this is not a partisan issue, but rather an issue of fundamental government functionality and decency. We have a GOP mayor and his GOP challenger now battling over who can be tougher on Blackwater. Because Blackwater is simply bad no matter how you cut it. The only way for them to open a new facility is to obscure their identity and true motives, which breaks local governments. And that's without even getting into the community impact on local schools and security having lying mercenaries running around. The underlying issue that Steve Francis lays bare here and which goes beyond local issues is this: What they say they're doing is not what they're permitted to do. If this is allowed to slide, they aren't bound by what they say they're doing. The floodgates are open and they can do **anything**.

The door needs to be slammed now, and hard. Francis and Sanders are racing towards the center-left in this election; Francis on transparent government, Sanders on marriage equality and no-nonsense finance. And now, they're both racing on Blackwater. Cause nobody wants to be the one opposed to functional government.

Tags: San Diego, Blackwater, Steve Francis, jerry sanders, (All Tags)

Print Friendly View Send As Email

Blackwater Explodes into San Diego Mayoral Race | 5 comments

great to see this issue get traction! n/t (0.00 / 0)

---

by: CarlsbadDem @ Thu May 08, 2008 at 00:19:32 AM CDT

color me ignorant (0.00 / 0)

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11	12	13	**14**	15	16	17
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25	26	27	28	29	30	31
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But I dont live in San Diego and know nothing about the mayoral election. Is it expected to be close? Which candidate seems better? Is there a Dem in the race?

by: zkeats @ Thu May 08, 2008 at 05:23:57 AM CDT

Mayoral Race (0.00 / 0)
It's non-partisan, but there is a Dem in the race- Floyd Morrow- but the focus has been on the Francis/Sanders match-up as the conventional wisdom is that Morrow doesn't have much of a chance of winning overall; the mayor will either be Sanders or Francis ultimately. So the question then becomes whether one of Francis/Sanders is knocked out on June 3 or if the two of them go on to the runoff in November.

The 'better' candidate is tough to figure, at least for me. I've been unimpressed by Sanders' constant run of scandals and "wow this is harder than I thought" rhetoric. But he's shown a willingness at times to do the right thing, like supporting marriage equality. Francis has been running from the right and the left, focused on clean and transparent government. Given that San Diego has spent the better part of a decade completely unable to even walk in a straight line, that's not necessarily such a bad idea. But it's unclear how willing Francis would be to work with the City Council as opposed to just running everything himself.

/long-winded answer

"We need men who can dream of things that never were." -JFK

by: Lucas O'Connor @ Thu May 08, 2008 at 11:40:37 AM CDT
[Parent]

Another disappointing mayoral race here (0.00 / 0)
This is a Dem town now, albeit barely. I'm quite disappointed that we couldn't get our act together for this race. No offense to Mr. Morrow, but even he says he only ran cause no other Dem would. **sigh**

Why not Toni Atkins, to bring up an example?

by: tilthouse @ Fri May 09, 2008 at 17:30:14 PM CDT
[Parent]

Another worry about Blackwater (0.00 / 0)
I know it's tinfoil hat stuff, but I am worried about their desire to locate close to the headquarters of the Pacific Fleet. I believe they are also located in Northern Virginia, which is close to Washington DC and the Chesapeake naval installations, as well as Florida where CENTCOM is located. If one wanted to prepare for a coup de'etat, one would preposition dependable forces near military command and control sites in an effort to neutralize resistance. I wonder if they have any sites up in Colorado.

I believe that a mercenary army operating within the borders of the US is one of the beggest threats to the existence of our Republic.

by: surfk9 @ Thu May 08, 2008 at 18:29:20 PM CDT

Blackwater Explodes into San Diego Mayoral Race | **5** comments

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EXHIBIT E

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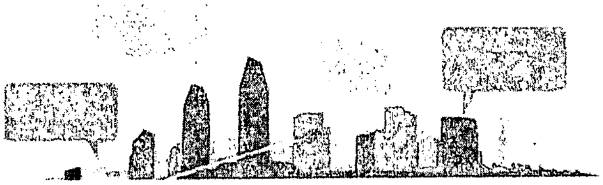

Previous entry: Citizen Komplain Next entry: Just Because They Say It Doesn't Make It So

Reconsidering Steve Francis

Filed under: Local, Candidates, Campaign Tactics
May 12, 2008 @ 08:05 am
By Alma Sove

Has your first impression of someone ever turned out to be wrong?

I hate admitting such things -- like the time in high school I misjudged an intelligent and well-connected scion for a nerd with nothing interesting to say.

It may be time to say again, I was wrong. After reading Chuck's post about Steve Francis -- the independently wealthy mayoral candidate funding his own campaign -- I thought, "Why does this man (Steve, not Chuck) think he can step into the public sector and do well?"

It drives me kind of nutty when successful businesspeople try to impress voters with their cash and business acumen.

Admitting I wrote off Steve Francis may not be the same as admitting I was a near-sighted fool in high school. Then again, it may be better to slow down and give some credit where it's due.

First, Steve Francis caught my eye with a major endorsement from the Sierra Club. He actually spoke out publicly against a bridge project slated to run through scenic Rose Canyon. Promoting open space in San Diego may be popular today, but in the not so distant past, politicians, especially Republican mayoral candidates, were practically called communists for supporting such measures. Back then, the nasty catch phrase "smart growth" was to liberals what "going green" is to (some) Republicans today. Preserving whatever open space San Diego has left is a huge priority for this little Dem voting in City Heights.

Is it a big issue for you, dear voter?

Then, Mr. Francis came a-wooing with his strong opposition to a recent Blackwater Worldwide zoning permit. The city-approved permit allows the multinational private militia, er, security firm a big space for their controversial training facility center. Nothing says "vote for me" like telling Blackwater to hit the road out of America's Finest City. Get out and stay out, Blackwater.

Granted, Mr. Francis may have gone a little overboard by suggesting Mayor Sanders was improperly influenced and gave preferential treatment to his lobbyist ties when the city granted the zoning permit. However, suggesting an independent party conduct an investigation into whether Blackwater misrepresented their interests seems completely reasonable to me.

A big plus for Mayor Sanders (originally my first and only choice for mayor), is the personal and professional courage he displayed during his 2007 speech supporting his daughter and gay marriage. He did it at the same time he announced his re-election bid, which makes the stance even more impressive.

In the end, while my ears perked up this week with many of the endorsement-notches added to Steve Francis' campaign belt, he hasn't won this voter over completely. He's still a Republican for one, and that makes me suspicious of the grassroots message promoted on the website. And as Chuck pointed out, he is saying "no new taxes," but many of his programs depend on doing just that.

Given that Mrs. Right isn't running for office, do you think finding Mr. Right is possible this election cycle?

-Citizen Voices blogger Alma Sove has spent most of her life in San Diego and is currently attending law school.

4 COMMENTS | EMAIL THIS | PERMALINK: http://www.kpbs.org/blogs2/in

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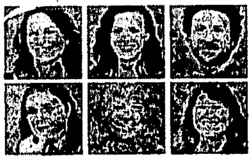

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23

EXHIBIT F

THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

MEMORANDUM

DATE: May 5, 2008

TO: Jay Goldstone, Chief Operating Officer

FROM: Jerry Sanders, Mayor

SUBJECT: Investigation into Permits Issued to Blackwater USA for Facility in Otay Mesa

---

It has come to my attention that Blackwater USA has recently been given permits and begun work to occupy space in the Otay Mesa area of the City of San Diego. Questions have been raised as to the appropriateness of this location for the uses planned by Blackwater and the means used by the company to acquire the necessary permits from the City.

Specifically, allegations have been made that the company potentially used misleading names such as Southwestern Law Enforcement to inappropriately disguise the true identity of the occupant.

Please conduct an investigation into the permits granted so far and permits yet to be granted, if any, and provide a report of your findings to me no later than Friday, May 23, 2008. Specifically, the review should include analysis of 1) the City's compliance with all local, state, and federal codes and regulations in issuing the permits, 2) consultation with the City Attorney on the legality of the issuance of permits in this case, and 3) appropriateness of the designation of "vocational/trade school" for the use proposed for the site .

JS/pr

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Bob Filner
Scott Peters, Council President
Kevin Faulconer, Councilmember
Toni Atkins, Councilmember

Anthony Young, Councilmember
Brian Maienshein, Councilmember
Donna Frye, Councilmember
Jim Madaffer, Councilmember
Ben Hueso, Councilmember
Michael Aguirre, City Attorney

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: May 16, 2008

TO: Honorable Mayor and Members of the City Council

FROM: City Attorney

SUBJECT: 7685 Siempre Viva Road, Blackwater Law Enforcement/Security Operations in Otay Mesa

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INTRODUCTION

On or about May 5, 2008, Mayor Sanders requested an investigation concerning the issuance of permits by the City for the use and construction of a training facility operated at 7685 Siempre Viva Road, in Otay Mesa, by an entity commonly known as Blackwater. On May 1, 2008, the Honorable Congressman Bob Filner requested a similar investigation. In response to these requests, the City Attorney's office conducted a legal analysis of the process used to issue the permits and the mechanisms available to Blackwater for compliance with the law.

BACKGROUND

On or about September 5, 2007, an entity operating under the project name "Southwest Law Enforcement Training Enterprise," filed a general application with the City of San Diego's Development Services Department [DSD] to conduct "Tenant Improvements" at 7685 Siempre Viva Road located within the Otay Mesa Development District. The existing use identified on the application was warehouse with offices. The proposed use identified on the application was identified as "same (no change)." The purpose of the application was to construct 44 feet of new partitions in existing office space. Accompanying the application was a signed Hazardous Materials Questionnaire where the applicant disclosed that there were no uses of explosives or blasting agents or other health hazards associated with the activity.

On or about February 7, 2008, another general application was submitted to the City of San Diego's DSD to conduct electrical work at the 7685 Siempre Viva Road site for a project entitled

"South West Police." The scope of the work included the installation of two new AC units and six exhaust fans.

On or about February 7, 2008, a separate General Application was also submitted to DSD for structural work for this same site. The project description on the application was to "[a]dd [an] indoor firing range." The identified proposed use on the application was for a training facility. The existing use was identified on the application as warehouse use and the project title was now "Southwest Law Enforcement." The Lessee or Tenant was identified on this application as "Raven Development Group" with an address in North Carolina. However, the September 5, 2007 application had identified the Lessee or Tenant as "Southwest Law Enforcement Training Enterprises" with an address in San Diego. The Hazardous Materials Questionnaire dated February 7, 2008 for the construction of the firing range did not identify any uses of explosives or blasting agents or other health hazards associated with this operation.

QUESTIONS PRESENTED

1. May the project applicant operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals?

2. What processes and approvals must be followed in order for the project applicant to operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District?

SHORT ANSWERS

1. No. The project applicant may not operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals.

2. The project applicant may operate such a facility within an Industrial Subdistrict of the Otay Mesa Development District after the City has complied with the requirements of the California Environmental Quality Act [CEQA] and after the City of San Diego's Planning Commission through a Process Four Hearing has authorized such use, pursuant to Section 1517.0301(c)(2) of the San Diego Municipal Code [SDMC]. However, if the project applicant intends to use firearms as part of the training conducted at this same training facility, the project applicant should also obtain permission from the City Council pursuant to SDMC Section 53.10(e) and (f). Furthermore, to be consistent with the purpose and intent of SDMC Section 112.0103, the highest decisionmaking body should hear all discretionary actions together; therefore, both the underlying approval of the use of the site for a law enforcement/security training facility should be made by the City Council in conjunction with the decision to allow the use of firearms on-site.

ANALYSIS

The legal authority of the City of San Diego to regulate the use of land for training facilities and firearm use falls squarely within the City's police powers. Exercising this authority, the City of San Diego strictly limits how and when firearms may be used within the City. Specifically, Section 53.10(a) states, "It is the purpose and intent of the Council of the City of San Diego that the firing of firearms and other explosives within the city limits be strictly regulated for the protection of all persons and property located in the City." With the exception of shooting galleries or target ranges (note: this exception does not include vocational or trade schools) and government authorized use, no firing of firearms is allowed without City Council approval by resolution. *See* SDMC Section 53.10(d) and (e). Approval by City Council is a discretionary act and will trigger the need to comply with CEQA. In addition, as explained in more detail below, the underlying zone and use restrictions may also limit where shooting ranges may be allowed.

7685 Siempre Viva Road is located in the IH-2-1 zone of the Otay Mesa Industrial Subdistrict within the Otay Mesa Development District. As stated in SDMC Section 131.0604(a), the purpose of the IH (Industrial—Heavy) zone

> is to provide space for land-intensive industrial activities emphasizing base-sector manufacturing. The IH zones are intended to promote efficient industrial land use with minimal development standards, while providing proper safeguards for adjoining properties and the community in general. It is the intent of these zones to limit the presence of nonindustrial uses in order to preserve land that is appropriate for large-scale industrial users.

The IH-1-1 zone allows primarily manufacturing uses and the IH-2-1 zone allows manufacturing uses with some office use. *See* SDMC Section 131.0604(b). Neither a shooting range nor a law enforcement/security training operation clearly qualify or fall within any of the permitted uses of the IH-1-1 or IH-2-1 zones. Table 131.06B of Section 131.0622, however, does permit vocational/trade schools in the IH-2-1 zone and SDMC Section 1517.0301(a)(1) cross-references Table 131.06B as applicable within the Otay Mesa Industrial Subdistrict. However, as of the date of this memo, no available information indicates clearly that the law enforcement/security training facility, as proposed by the applicant, would qualify as a vocational or trade school. In addition, SDMC Section 1517.0301(a)(8)(A) further restricts trade schools within the Otay Mesa Industrial Subdistrict to those "trade schools instructing in subjects related to a use permitted within the Industrial Subdistrict." However, SDMC Section 1517.0301(c)(1) and (2) states other uses not otherwise identified are permitted under the following circumstances:

> (1) Accessory uses for any of the foregoing permitted uses including signs. As specified in Land Development Code Chapter 14, Article 2, Division 12 (Sign Regulations), for sign

> regulatory purposes this Otay Mesa Development District shall be deemed to be an industrial zone.[1]
>
> (2) Any other uses which the Planning Commission finds, in accordance with Process Four, to be similar in character to the uses enumerated in the Otay Mesa Development District Ordinance and which are clearly within the intent and purpose of the Otay Mesa Development District. The adopted resolution embodying any such finding shall be filed in the office of the City Clerk.

Given the type of operation proposed, Planning Commission approval pursuant to Section 1517.0301(c)(2) is appropriate here.[2] Planning Commission review is a discretionary act and will trigger the requirements of CEQA.[3]

Since the use of firearms at the site will trigger City Council approval, it would be appropriate under these circumstances for the City Council to determine the whole of the action; namely, whether to authorize the use of 7685 Siempre Viva Road as a law enforcement/security training facility where firearms will be used. This would be consistent with SDMC Section 112.0103.[4]

With respect to the CEQA analysis, at a minimum, potential environmental impacts should be analyzed, including noise impacts, potential for discharges into the storm drain, accidental explosion or release of hazardous substances (e.g., lead discharge), fire hazards and impacts on fire protection services, other safety concerns due to the firing of guns and potential adverse effects due to traffic, such as traffic congestion. To the extent these impacts are determined to be significant, then they should be mitigated and the mitigation documented in a Mitigated Negative Declaration. Mitigation may include, but is not limited to, the following:

- The facility be constructed with impenetrable walls, adequate ventilation and lighting systems for a shooting range, and acoustical treatment for sound attenuation suitable for a firing range;

---

[1] The training facility does not fall into the category of "accessory use" as defined in Section 113.0103.

[2] SDMC Section 131.0110(a) gives some discretion to the City Manager to determine the appropriate use category; however, this discretion does not authorize arbitrary determinations. In fact, SDMC Section 131.0110(c) allows for an amendment to the Use Regulations Table where a use category or subcategory cannot be determined. Any amendment will require City Council approval. Planning Commission review under Section 1517.0301(c)(2) provides another means for determining appropriate use, in order to avoid the problem of having to fit a square peg into a round hole.

[3] Even if this operation were only characterized as a shooting range and not a training facility, a shooting range is not a use authorized within this zone and would also trigger the need for Planning Commission review, regardless of the applicability of SDMC Section 53.10. *See also* SDMC Sections 131.0620(a), 131.0630(a) and 1517.0301(a).

[4] SDMC Section 112.0103 states: "When an applicant applies for more than one permit, map, or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development as set forth in Section 111.1015. The findings required for approval of each permit shall be considered individually, consistent with Section 126.0105."

- The facility be operated in a manner that minimizes the possibility of a release of hazardous waste and/or hazardous waste constituents (e.g., fine powders of range lead); The facility collect, manage, and dispose of all unreacted gun powders and residues properly as hazardous waste;

- The facility label each container of hazardous waste generated on-site; and,

- The facility complete a Hazardous Waste Manifest for all hazardous wastes generated on-site, and use a registered hazardous waste transporter to transport hazardous wastes off-site to an authorized facility.

CONCLUSION

Because construction permits and other approvals were issued before discretionary approval of the underlying use had been obtained, a stop work order should be issued. The applicant should be required to submit a new application for discretionary approval in order to use the site as a law enforcement/security training facility where firearms will be used.[5] In addition, no Certificate of Occupancy under SDMC Section 129.0114 should be issued until all discretionary approvals have been obtained, including compliance with CEQA. If a Certificate of Occupancy has already been issued in error, then proceedings to suspend or revoke the Certificate should be initiated pursuant to SDMC Section 129.0118. This Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate.

MICHAEL J. AGUIRRE,
City Attorney

MJA:SRE:pev

[5] SDMC Section 129.0108 states, "After all required approvals, including any required *development permits*, have been obtained and all required fees have been paid, the Building Official may issue a *construction permit*. Construction shall not begin until the required permits have been issued." Section 129.0105(a) further states, "If a proposed *development* requires one or more *development permits*, the required *development permits* must be issued before an application is submitted for a *construction permit* except as provided in Section 129.0105(c)."

EXHIBIT H

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May 19, 2008

Mayor Jerry Sanders
City Administration Building
11th Floor, 202 C Street
San Diego, CA 92101

Dear Mayor Sanders:

This past Friday, City Attorney Aguirre issued a memorandum to the Mayor and Members of the City Council. The memo, which indicates that it was prepared in response to your request for an investigation, purports to analyze certain legal issues relevant to the permitting of the training facility to be operated by our client, Blackwater Worldwide, in Otay Mesa. Based on that analysis, which proceeds on incorrect factual assumptions and reaches faulty legal conclusions, the memorandum recommends that action be taken to prevent the facility from operating.

Certain media reports discussing the City Attorney's memorandum also indicated that, in apparent reliance on the City Attorney's memorandum, the City may be considering imminent action with respect to facility and its permits. To our understanding, your administration has been conducting its own review of the permitting process with respect to the Otay Mesa facility, with an initial report on the matter not due until May 23. As such, it may well be the case that the media reports of imminent action on your administration's behalf, be it in reliance on the City Attorney's memorandum or otherwise, are inaccurate.

To the extent your administration is considering such action, and particularly to the extent your administration is relying on the City Attorney's memorandum, we felt it important to apprise you and your administration of the correct facts and proper legal analysis. In doing so, we hope to prevent action taken in error that might irreparably harm Blackwater.[1]

[1] Although the City Attorney did not contact Blackwater for information pertaining to its permits, the memorandum's concludes by stating that the "Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate." Given the City Attorney's apparent willingness to consider additional information, we are copying the City Attorney on this letter.

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For starters, the memorandum states that because Blackwater will train members of the U. S. Navy on the proper use of firearms at the facility, the San Diego Municipal Code (SDMC) requires a special approval by the city council. This is incorrect.

SDMC section 53.10 governs the discharge of firearms within the city. As the memorandum noted, section 53.10 generally prohibits the use of firearms and allows the city council to issue permits for the same under "conditions as it deems proper." However, SDMC section 53.10(d) clearly permits the discharge of firearms, without discretionary council approval or CEQA review, if the firearms are discharged at a facility instructing on the proper use of firearms and allowing individuals to engage in target practice. Such facilities are called "target ranges."[2] Section 53.10(d) reads: **"Exceptions: This section does not apply to . . . target ranges."**

By exempting from special approval processes the places where San Diegans (and in this case, the men and women of the U.S. Navy) may practice gun safety and gun accuracy, the Municipal Code is consistent with the public policy of the State of California, which similarly exempts target ranges from even the strictest of gun laws. *See* Cal. Pen. Code § 12026.2(a)(9) (exempting people traveling to target ranges from California's concealed weapon ban); Cal. Pen. Code § 12027(f) (exempting members of target ranges, whether public or private, from other concealed weapons restrictions); Cal. Pen. Code § 12031(b)(5) (exempting individuals at target ranges from being charged with felony for carrying a loaded weapon); Cal. Pen. Code § 12070(b)(9) (exempting target ranges that loan guns to individuals from California gun-transfer laws); Cal. Pen. Code § 12073(b)(7) (exempting target ranges from certain recordkeeping requirements); Cal. Pen. Code § 12280(k)(1)(C)(i) (exempting target ranges from California assault weapons ban); Cal. Pen. Code § 12285(c)(3) (exempting individuals at target ranges from certain assault weapon registration requirements); and Cal. Civ. Code § 3482.1 (exempting compliant shooting ranges from nuisance liability).

Taken together, these provisions, along with SDMC section 53.10(d), make very clear that it is the policy of the State of California and the City of San Diego to exempt target ranges from even the most onerous of gun restrictions, to encourage learning about the safe operation of firearms. Consequently, it is inaccurate to claim that the target range component of Blackwater's training facility will require council approval or CEQA review.

The memorandum also states that a law enforcement or security training operation does not "clearly qualify" as a permitted use in Otay Mesa.[3] This again is incorrect, as vocational facilities are permitted in Otay Mesa, as a matter of right, under two distinct provisions of the Municipal Code. SDMC section 1517.0301(a)(1) specifically authorizes "All uses permitted in the IH-2-1 zone." It further exempts facilities permitted in the IH-2-1 zone from obtaining any special permits, including an Otay Mesa Development Permit. Vocational schools are permitted in the IH-2-1 zone, under SDMC section 131.0622, Table 131-06B. Thus, because Blackwater's facility, a vocational school, would be permitted in the IH-2-1 zone as a matter of right, it is similarly permissible, as a matter of right, in Otay Mesa.

---

[2] While the SDMC does not define "target range," the dictionary defines "target range" as "a practice range for target practice," a synonym for "firing range." *See* http://wordnet.princeton.edu/perl/webwn?s=target%20range (last accessed May 18, 2008).

[3] City Attorney Memorandum, page 3.

SDMC section 1517.0301(a)(8)(A) provides additional authority that a vocational school is permissible in Otay Mesa. That section allows a trade school to operate that instructs in subjects *related* to a use *permitted* in the Industrial Subdistrict. The Industrial Subdistrict allows for a wide variety of uses, including: (1) scientific research and development activities; (2) manufacturing plants requiring advance technology and skills; (3) facilities engaged in the production of experimental products; (4) general industrial uses (defined as "Establishments engaged in the . . . manufacturing . . . testing [or] servicing . . . of a wide range of products"); (4) storage warehouses; and (5) facilities involved in the wholesale distribution of various goods (including machinery, equipment, and supplies). *See* San Diego Municipal Code §§ 1517.0301(a)(2)(A), (2)(B), (2)(D), (3), (6)(A), (6)(B), *et seq.* Thus, if the subjects taught at Blackwater's vocational facility relate to *any* of these permissible uses, it is also permissible.

Blackwater's facility will instruct in a variety of subjects, all of which are related to permitted uses in the Otay Mesa Industrial Subdistrict. For example, Blackwater's facility will instruct on proper safety techniques for using the latest state-of-the-art personal weaponry. Because facilities engaged in researching and developing this weaponry are permitted in the subdistrict, a vocational school instructing end users on how to properly employ these devices would also be permissible. Blackwater's facility will also instruct students on how to assemble and disassemble firearms. Because facilities engaged in the manufacturing of firearms and firearm components are permitted in the subdistrict, a vocational school instructing individuals on how to assemble these items would also be permissible.

One final issue on this subject is worth discussing. The memorandum questions whether the Blackwater facility is indeed a "vocational school."[4] Yet, on page two, the memorandum recognizes that the facility will be a "law enforcement/security training facility." The facility will clearly be a "vocational school," as that term is commonly understood. While the San Diego Municipal Code does not define "vocational school," the dictionary defines it as "a school offering instruction in one or more skilled or semiskilled trades or occupations"[5] There should be no doubt that a facility offering specialized training to the men and women of the U.S. Navy would qualify as a vocational school. To state otherwise is to demean the occupational choice of the men and women who chose serving our country in the military as their occupation.[6]

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[4] *Id.*

[5] *See* http://dictionary.reference.com/browse/vocational%20school (last accessed May 18, 2008).

In sum, the Blackwater facility is clearly a vocational school. Vocational schools are permitted in Otay Mesa – as a matter of right with no need for discretionary or CEQA review – under two separate provisions of the Municipal Code. In fact, a P.O.S.T-certified[7] police academy is located on the campus of Southwestern College, at 8100 Gigantic Street in Otay Mesa, less than a quarter mile from Blackwater's facility. There can be no doubt that the Blackwater facility is properly located within Otay Mesa, and that the city's ministerial review process correctly resulted in the issuance of permits for the facility.[8]

Blackwater Worldwide is keenly aware that this is an election year, but asks that politics stay out of the permitting process. Blackwater has been completely forthcoming with every city inspector and every city official. Just three weeks ago, on April 29, we met with the Chief Building Official, Afsaneh Ahmadi, at the Development Services headquarters. At that meeting, Ms. Ahmadi closely reviewed all of Blackwater's plans and permit applications, and the next day, approved all permits. On May 12, Blackwater opened the facility to the city's Internal Auditor, an extraordinary step considering municipal finances have not been (and to our knowledge are not) an issue here.

Throughout the permitting process, Blackwater has collaborated with city officials to make sure it proceeded lawfully and openly. As a result, we know Blackwater's permits are proper, and we trust that with this letter, we have cleared up the factual or legal misconceptions concerning the facility contained in the City Attorney's memorandum. We also trust that no actions will be taken by your office or administration based on the City Attorney's memorandum.[9]

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[6] As the memorandum also noted, the facility also has the capability to instruct members of law enforcement and those wanting a career in security. This should also remove any doubt that the facility is a vocational school, as surely law enforcement is a vocation; law-enforcement techniques are not typically taught at conventional universities.

[7] P.O.S.T. stands for Peace Officer Standards and Training. P.O.S.T. certification means a facility follows the standards and training courses outlined by the state of California for the training of peace officers.

[8] There also appears to be a misconception in the memorandum that a facility must be *either* a "target range" *or* a "vocational school." But those terms address different concepts in the statutory scheme. A "vocational facility" is a zoning "use." *See, e.g.*, SDMC section 131.0622. Other such permitted uses, for example, include universities or sports arenas, and others listed in the zoning ordinance. *See, e.g.*, SDMC §§ 131.0112(a), 131.0622. A "target range" on the other hand, is not a "use" and the code does not define it as such. Indeed, a "target range" is a component or feature of other uses, because a "target range" can be on the campus of a university, within a sports club, or part of the instruction taught at a vocational facility. Thus, a "vocational facility" can feature a "target range."

[9] We also note, at a minimum, before any action is taken on any of its permits, Blackwater would need to be provided formal notice of whatever "problems" allegedly were found, and an opportunity to be challenge those
(cont'd)

As the Navy itself has noted, Blackwater provides indispensable, "highly specialized" training of our "Sailors and Marines [when] no active duty personnel possess[] the requisite experience."[10] San Diego has a proud history of being a city very supportive of our men and women in the U.S. Navy, and there is no good reason for San Diego to deprive them of training at this critical time. Blackwater Worldwide knows it will make the community proud by offering this training, vital to national security, in the City of San Diego.

We would be happy to provide the city additional information as necessary. Please do not hesitate to contact me with any questions.

Very truly yours,

John Nadolenco
Mayer Brown LLP

cc: City Attorney Michael Aguirre

Chief Building Official Afsaneh Ahmadi

Members of the City Council

(... cont'd)

findings "at a meaningful time and in a meaningful manner." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 2649 (2004) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' These essential constitutional promises may not be eroded." (internal quotes and citations omitted)).

[10] Letter from Rear Admiral M. Flanders to Ms. Barbara Simmons (Jul. 31, 2007).

THE CITY OF SAN DIEGO

May 19, 2008

Mr. Brian Bonfiglio
Vice President
Blackwater Worldwide
PO Box 710897
San Diego, CA 92171-0897

Subject: 7685 Siempre Viva Road, Raven Development Group

Dear Mr. Bonfiglio,

The City will not issue a certificate of occupancy for the above referenced project pursuant to Section 129.0114 of the San Diego Municipal Code (SDMC). The portions of the building identified for use as a shooting range and vocational/trade school shall not be occupied until a certificate of occupancy has been issued for this change of use or occupancy pursuant to SDMC Section 129.0113.

As outlined in the attached opinion from the City Attorney's office, no certificate of occupancy will be issued until the appropriate discretionary processes associated with the use of firearms in city limits and determination of use for the vocational/trade school by the Planning Commission has been completed. Since Planning Commission and City's Council's actions will be considered discretionary, these actions are subject to review under the California Environmental Quality Act (CEQA).

As the majority of the structure is still identified for warehouse uses, no other uses are permitted until a submission for a request of change in occupancy has been made and approved by the Development Services Department.

Sincerely,

Kelly Broughton, Director
Development Services Department

Cc: Jay Goldstone, Chief Operating Officer
Michael J. Aguirre, City Attorney
William Anderson, Executive Director of City Planning and Development
Afsaneh Ahmadi, Chief Building Official

EX. I
36

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: May 16, 2008

TO: Honorable Mayor and Members of the City Council

FROM: City Attorney

SUBJECT: 7685 Siempre Viva Road, Blackwater Law Enforcement/Security Operations in Otay Mesa

---

INTRODUCTION

On or about May 5, 2008, Mayor Sanders requested an investigation concerning the issuance of permits by the City for the use and construction of a training facility operated at 7685 Siempre Viva Road, in Otay Mesa, by an entity commonly known as Blackwater. On May 1, 2008, the Honorable Congressman Bob Filner requested a similar investigation. In response to these requests, the City Attorney's office conducted a legal analysis of the process used to issue the permits and the mechanisms available to Blackwater for compliance with the law.

BACKGROUND

On or about September 5, 2007, an entity operating under the project name "Southwest Law Enforcement Training Enterprise," filed a general application with the City of San Diego's Development Services Department [DSD] to conduct "Tenant Improvements" at 7685 Siempre Viva Road located within the Otay Mesa Development District. The existing use identified on the application was warehouse with offices. The proposed use identified on the application was identified as "same (no change)." The purpose of the application was to construct 44 feet of new partitions in existing office space. Accompanying the application was a signed Hazardous Materials Questionnaire where the applicant disclosed that there were no uses of explosives or blasting agents or other health hazards associated with the activity.

On or about February 7, 2008, another general application was submitted to the City of San Diego's DSD to conduct electrical work at the 7685 Siempre Viva Road site for a project entitled

"South West Police." The scope of the work included the installation of two new AC units and six exhaust fans.

On or about February 7, 2008, a separate General Application was also submitted to DSD for structural work for this same site. The project description on the application was to "[a]dd [an] indoor firing range." The identified proposed use on the application was for a training facility. The existing use was identified on the application as warehouse use and the project title was now "Southwest Law Enforcement." The Lessee or Tenant was identified on this application as "Raven Development Group" with an address in North Carolina. However, the September 5, 2007 application had identified the Lessee or Tenant as "Southwest Law Enforcement Training Enterprises" with an address in San Diego. The Hazardous Materials Questionnaire dated February 7, 2008 for the construction of the firing range did not identify any uses of explosives or blasting agents or other health hazards associated with this operation.

QUESTIONS PRESENTED

1. May the project applicant operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals?

2. What processes and approvals must be followed in order for the project applicant to operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District?

SHORT ANSWERS

1. No. The project applicant may not operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals.

2. The project applicant may operate such a facility within an Industrial Subdistrict of the Otay Mesa Development District after the City has complied with the requirements of the California Environmental Quality Act [CEQA] and after the City of San Diego's Planning Commission through a Process Four Hearing has authorized such use, pursuant to Section 1517.0301(c)(2) of the San Diego Municipal Code [SDMC]. However, if the project applicant intends to use firearms as part of the training conducted at this same training facility, the project applicant should also obtain permission from the City Council pursuant to SDMC Section 53.10(e) and (f). Furthermore, to be consistent with the purpose and intent of SDMC Section 112.0103, the highest decisionmaking body should hear all discretionary actions together; therefore, both the underlying approval of the use of the site for a law enforcement/security training facility should be made by the City Council in conjunction with the decision to allow the use of firearms on-site.

ANALYSIS

The legal authority of the City of San Diego to regulate the use of land for training facilities and firearm use falls squarely within the City's police powers. Exercising this authority, the City of San Diego strictly limits how and when firearms may be used within the City. Specifically, Section 53.10(a) states, "It is the purpose and intent of the Council of the City of San Diego that the firing of firearms and other explosives within the city limits be strictly regulated for the protection of all persons and property located in the City." With the exception of shooting galleries or target ranges (note: this exception does not include vocational or trade schools) and government authorized use, no firing of firearms is allowed without City Council approval by resolution. *See* SDMC Section 53.10(d) and (e). Approval by City Council is a discretionary act and will trigger the need to comply with CEQA. In addition, as explained in more detail below, the underlying zone and use restrictions may also limit where shooting ranges may be allowed.

7685 Siempre Viva Road is located in the IH-2-1 zone of the Otay Mesa Industrial Subdistrict within the Otay Mesa Development District. As stated in SDMC Section 131.0604(a), the purpose of the IH (Industrial—Heavy) zone

> is to provide space for land-intensive industrial activities emphasizing base-sector manufacturing. The IH zones are intended to promote efficient industrial land use with minimal development standards, while providing proper safeguards for adjoining properties and the community in general. It is the intent of these zones to limit the presence of nonindustrial uses in order to preserve land that is appropriate for large-scale industrial users.

The IH-1-1 zone allows primarily manufacturing uses and the IH-2-1 zone allows manufacturing uses with some office use. *See* SDMC Section 131.0604(b). Neither a shooting range nor a law enforcement/security training operation clearly qualify or fall within any of the permitted uses of the IH-1-1 or IH-2-1 zones. Table 131.06B of Section 131.0622, however, does permit vocational/trade schools in the IH-2-1 zone and SDMC Section 1517.0301(a)(1) cross-references Table 131.06B as applicable within the Otay Mesa Industrial Subdistrict. However, as of the date of this memo, no available information indicates clearly that the law enforcement/security training facility, as proposed by the applicant, would qualify as a vocational or trade school. In addition, SDMC Section 1517.0301(a)(8)(A) further restricts trade schools within the Otay Mesa Industrial Subdistrict to those "trade schools instructing in subjects related to a use permitted within the Industrial Subdistrict." However, SDMC Section 1517.0301(c)(1) and (2) states other uses not otherwise identified are permitted under the following circumstances:

> (1) Accessory uses for any of the foregoing permitted uses including signs. As specified in Land Development Code Chapter 14, Article 2, Division 12 (Sign Regulations), for sign

> regulatory purposes this Otay Mesa Development District shall be deemed to be an industrial zone.[1]
>
> (2) Any other uses which the Planning Commission finds, in accordance with Process Four, to be similar in character to the uses enumerated in the Otay Mesa Development District Ordinance and which are clearly within the intent and purpose of the Otay Mesa Development District. The adopted resolution embodying any such finding shall be filed in the office of the City Clerk.

Given the type of operation proposed, Planning Commission approval pursuant to Section 1517.0301(c)(2) is appropriate here.[2] Planning Commission review is a discretionary act and will trigger the requirements of CEQA.[3]

Since the use of firearms at the site will trigger City Council approval, it would be appropriate under these circumstances for the City Council to determine the whole of the action; namely, whether to authorize the use of 7685 Siempre Viva Road as a law enforcement/security training facility where firearms will be used. This would be consistent with SDMC Section 112.0103.[4]

With respect to the CEQA analysis, at a minimum, potential environmental impacts should be analyzed, including noise impacts, potential for discharges into the storm drain, accidental explosion or release of hazardous substances (e.g., lead discharge), fire hazards and impacts on fire protection services, other safety concerns due to the firing of guns and potential adverse effects due to traffic, such as traffic congestion. To the extent these impacts are determined to be significant, then they should be mitigated and the mitigation documented in a Mitigated Negative Declaration. Mitigation may include, but is not limited to, the following:

- The facility be constructed with impenetrable walls, adequate ventilation and lighting systems for a shooting range, and acoustical treatment for sound attenuation suitable for a firing range;

---

[1] The training facility does not fall into the category of "accessory use" as defined in Section 113.0103.

[2] SDMC Section 131.0110(a) gives some discretion to the City Manager to determine the appropriate use category; however, this discretion does not authorize arbitrary determinations. In fact, SDMC Section 131.0110(c) allows for an amendment to the Use Regulations Table where a use category or subcategory cannot be determined. Any amendment will require City Council approval. Planning Commission review under Section 1517.0301(c)(2) provides another means for determining appropriate use, in order to avoid the problem of having to fit a square peg into a round hole.

[3] Even if this operation were only characterized as a shooting range and not a training facility, a shooting range is not a use authorized within this zone and would also trigger the need for Planning Commission review, regardless of the applicability of SDMC Section 53.10. *See also* SDMC Sections 131.0620(a), 131.0630(a) and 1517.0301(a).

[4] SDMC Section 112.0103 states: "When an applicant applies for more than one permit, map, or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development as set forth in Section 111.1015. The findings required for approval of each permit shall be considered individually, consistent with Section 126.0105."

- The facility be operated in a manner that minimizes the possibility of a release of hazardous waste and/or hazardous waste constituents (e.g., fine powders of range lead); The facility collect, manage, and dispose of all unreacted gun powders and residues properly as hazardous waste;
- The facility label each container of hazardous waste generated on-site; and,
- The facility complete a Hazardous Waste Manifest for all hazardous wastes generated on-site, and use a registered hazardous waste transporter to transport hazardous wastes off-site to an authorized facility.

CONCLUSION

Because construction permits and other approvals were issued before discretionary approval of the underlying use had been obtained, a stop work order should be issued. The applicant should be required to submit a new application for discretionary approval in order to use the site as a law enforcement/security training facility where firearms will be used.[5] In addition, no Certificate of Occupancy under SDMC Section 129.0114 should be issued until all discretionary approvals have been obtained, including compliance with CEQA. If a Certificate of Occupancy has already been issued in error, then proceedings to suspend or revoke the Certificate should be initiated pursuant to SDMC Section 129.0118. This Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate.

MICHAEL J. AGUIRRE,
City Attorney

MJA:SRE:pev

[5] SDMC Section 129.0108 states, "After all required approvals, including any required *development permits*, have been obtained and all required fees have been paid, the Building Official may issue a *construction permit*. Construction shall not begin until the required permits have been issued." Section 129.0105(a) further states, "If a proposed *development* requires one or more *development permits*, the required *development permits* must be issued before an application is submitted for a *construction permit* except as provided in Section 129.0105(c)."

THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

MEMORANDUM

DATE: May 5, 2008

TO: Jay Goldstone, Chief Operating Officer

FROM: Jerry Sanders, Mayor

SUBJECT: Investigation into Permits Issued to Blackwater USA for Facility in Otay Mesa

---

It has come to my attention that Blackwater USA has recently been given permits and begun work to occupy space in the Otay Mesa area of the City of San Diego. Questions have been raised as to the appropriateness of this location for the uses planned by Blackwater and the means used by the company to acquire the necessary permits from the City.

Specifically, allegations have been made that the company potentially used misleading names such as Southwestern Law Enforcement to inappropriately disguise the true identity of the occupant.

Please conduct an investigation into the permits granted so far and permits yet to be granted, if any, and provide a report of your findings to me no later than Friday, May 23, 2008. Specifically, the review should include analysis of 1) the City's compliance with all local, state, and federal codes and regulations in issuing the permits, 2) consultation with the City Attorney on the legality of the issuance of permits in this case, and 3) appropriateness of the designation of "vocational/trade school" for the use proposed for the site .

JS/pr

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Bob Filner
Scott Peters, Council President
Kevin Faulconer, Councilmember
Toni Atkins, Councilmember

Anthony Young, Councilmember
Brian Maienshein, Councilmember
Donna Frye, Councilmember
Jim Madaffer, Councilmember
Ben Hueso, Councilmember
Michael Aguirre, City Attorney

EXHIBIT J

San Diego City Hall Probes Permit for Blackwater Facility

May 20, 2008
Amita Sharma

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Recent news that Blackwater Worldwide planned to open a Navy training center in Otay Mesa caught almost everybody off-guard. Some say the company used stealth tactics to get permits after it was forced to withdraw from a controversial military training project in East County. But Blackwater says it never hid its plans. And now city hall is trying to figure out the truth. KPBS Reporter Amita Sharma has more.

> **Broughton:** We have no official application from a company named Blackwater.

In fact, San Diego's development services director Kelly Broughton says he didn't find out Blackwater wanted to set up an indoor training center for sailors at an Otay Mesa warehouse until he got a call from a news reporter last month. He's not surprised he didn't know.

> **Broughton:** Generally owners of buildings or tenants of buildings who are coming into apply for permits, pick those organizations or companies that are best able to get through the permit process.

In the case of Blackwater, the company used the name of affiliate Southwest Law Enforcement when it first applied for a city permit. On the second permit application, SAF Child Investments -- the owner of the building -- is listed as the applicant. And the third permit names another Blackwater affiliate Raven Development.

Blackwater's Brian Bonfiglio denies the company's use of three different affiliate names was meant to deceive.

> **Bonfiglio:** The names we used on this were the exact same names we used for two years on working on the other project in Potrero. The county required a project name for their file. So it was Blackwater West.

Real estate consultant Jason Luker says there's a reason corporations use the names of subcontractors. It's a layer of insulation from litigation.

> **Luker:** They do that to shield the corporate entity from legal risk, from financial risk. A lot of lenders won't lend on a specific project unless they are shielded from the parent corporations it's a standard business practice.

But San Diego City Attorney Mike Aguirre says in this instance that explanation is irrelevant.

> **Aguirre:** You can't sneak in the back door and then make use of the general practices and procedures as a justification for doing something really in this particular situation may not be permissible."

Blackwater plans to teach sailors at the Otay facility how to fend off terrorist attacks at a ship simulator and a firing range such as this one on a company training video. But Blackwater's affiliates didn't mention the firing range until its third application for a permit. All of the permits it received were ministerial which didn't require city council approval or public input. And Aguirre says that fire range requires a more rigorous review process and an environmental study.

> **Aguirre:** The fact that there are going to be hazardous materials, firearms and other instrumentalities associated with war-related activity may trigger a requirement that before that use can be adapted that the whole plan has to go before the city council.

EX. J
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Earlier this month, the Mayor Jerry Sanders launched an inquiry into how Blackwater obtained its permits. One issue under review is why the development services department classified the company's navy training center as a trade school. David Potter is a former planner with the city. He says no city rules exist that would exclude the project from operating as a trade school.

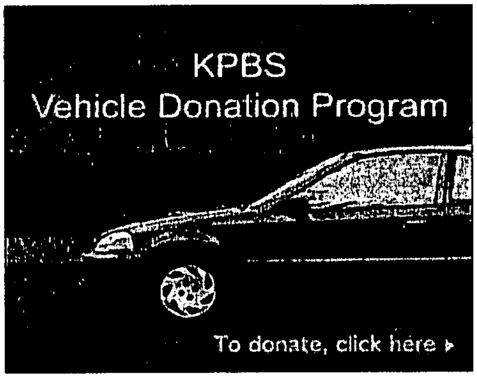
> **Potter:** The zone clearly allows that but doesn't define what it is....so I would say this qualifies as vocational training.

And that's why development services director Broughton says even if Blackwater had been listed on the permit applications, his staff wouldn't have done anything differently.

> **Broughton:** I don't see that I would have had any other choice but to approve it because it complied with our municipal code and the California Building Code.

Blackwater's Bonfiglio says he already has his occupancy permit for the site. But last week, on the advice of the Aguirre the mayor ordered Blackwater to stop work on the facility. A spokesman said Sanders may reconsider his decision once his investigation is complete this Friday.

Amita Sharma, KPBS News.



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EX. J
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EXHIBIT K

Neil Dymott
ATTORNEYS

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May 20, 2008

Mr. Kelly Broughton
Development Services
CITY OF SAN DIEGO
1222 First Avenue, MS 501
San Diego, CA 92101-4155

Dear Mr. Broughton:

We are in receipt of your letter dated May 19 that indicates the city "will not issue a certificate of occupancy" for the Blackwater Otay Mesa facility. Your letter states you reached this conclusion based on the "opinion from the City Attorney's office," dated May 16. We have grave concerns with you proceeding based on the City Attorney's memorandum, because the City Attorney's memorandum was fatally flawed. For the reasons explained below (and in the attached letter), we ask you to reconsider your letter of yesterday.

Our primary concern is that you proceeded without correct information. The City Attorney's May 16 memorandum stated that the "Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate." In an effort to provide the city with the additional information and facts the City Attorney requested, we submitted to the Mayor (copying you and the City Attorney) a letter outlining all relevant information and the appropriate legal analysis. We transmitted this letter to you yesterday, in the late afternoon. Your letter indicating the city would not issue the certificate of occupancy arrived very shortly thereafter.

Because of the close time proximity of the letters, and because your letter did not appear to have the benefit of the additional facts and information we provided, we have reason to believe our letters crossed in transmission. In an effort to make sure you have all possible information before you make a crucial decision in error, I am again summarizing below all salient facts and the appropriate legal analysis.

- **The City's Firearms Ban makes an exception for Target Ranges.** Normally, entities wishing to discharge firearms or explosives within city limits must apply for council approval, which is a discretionary process. However, the city law establishing this process clearly exempts target ranges. San Diego Municipal Code Section 53.10(d) reads: "Exceptions: This section does not apply to . . . target ranges." This code provision is

MEMBER, INTERNATIONAL SOCIETY OF PRIMERUS LAW FIRMS PRIMERUS

Neil Dymott

consistent with exemptions for target ranges outlined in state law, exemptions which exist undoubtedly to encourage facilities that teach the safe, effective use of firearms. Blackwater's facility will teach the safe, effective use of firearms and is therefore not subject to the city council approval process.

- **Blackwater's Otay Mesa location is a vocational facility.** A vocational facility is a school, other than a traditional university, where subjects are taught to facilitate a person's entry or continuing membership in a skilled or semi-skilled profession. Blackwater's Otay facility will teach men and women of the Navy how to properly learn the skills necessary to be successful in their vocation. The facility also has the capability of training local law-enforcement deputies and warehouse security guards on safe, effective apprehension techniques. Blackwater's Otay Mesa facility is therefore undoubtedly a vocational facility.

- **Vocational Facilities are permitted in Otay Mesa as a matter of right, after only ministerial review.** Two separate code provisions allow for vocational facilities in Otay Mesa. SDMC section 1517.0301(a)(1) specifically authorizes "All uses permitted in the IH-2-1 zone." Vocational facilities are permitted in the IH-2-1 zone under SDMC section 131.0622. Moreover, SMDC section 1517.0301(a)(8)(A) specifies that vocational facilities instructing on subjects related to permitted uses in Otay Mesa are also permitted. The Blackwater facility will instruct on a number of subjects related to permitted uses in Otay Mesa. Consequently, the facility is permissible as a matter of right.

- **A facility that is permissible as a matter of right need only undergo ministerial review and inspections. Our facility has undergone these inspections, and passed with flying colors.** The code specifies that facilities not subject to discretionary review must only meet the criteria outlined in the code. These include inspections for such things as the requisite number of fire exits and other safety-related features. Your staff repeatedly inspected the Blackwater Otay Mesa facility and repeatedly examined its plans. On April 29, we met with Chief Building Official Afsaneh Ahmadi for one final review. The next day, your department stamped all permits. Thus, Development Services has no discretion on whether to issue the Certificate of Occupancy, which is Blackwater's due, it having met all the criteria in the code. Indeed, you were quoted in the San Diego Union Tribune on May 15 saying that Blackwater's permits that your office had just issued were non-appealable, thereby recognizing that

Neil Dymott

---

they were nondiscretionary. To withhold our Certificate of Occupancy at this stage is completely improper and illegal.

- Non-Discretionary Permits are not subject to CEQA review. Under state law, only projects subject to discretionary review are subject to the CEQA process. Cal. Pub. Res. Code § 21080(b)(1). Blackwater's permits are non-discretionary. Thus your May 19 letter was in error when it stated Blackwater's permits for the Otay facility should be subject to CEQA review.

We stress that withholding Blackwater's Certificate of Occupancy will cause grave harm. It could jeopardize Blackwater's longstanding contract with the Navy, to train sailors in basic anti-terrorism tactics, training which is designed to avoid a repeat of the tragic attack on the U.S.S. Cole in 2000. Withholding the Certificate of Occupancy could diminish Blackwater's business reputation and organizational goodwill. It could cause harm to national security. And it likely constitutes a constitutional violation, since the city is treating Blackwater differently from all other permit applicants and taking these steps without affording Blackwater the process it is due.

We ask you to rescind or stay your May 19 letter and to issue the Certificate of Occupancy for Blackwater's Otay facility immediately. If we do not hear from you by close of business Friday, we will be forced to consider taking other steps to enforce and protect Blackwater's rights.

Very truly yours,

Neil, Dymott, Frank,
McFall & Trexler APLC

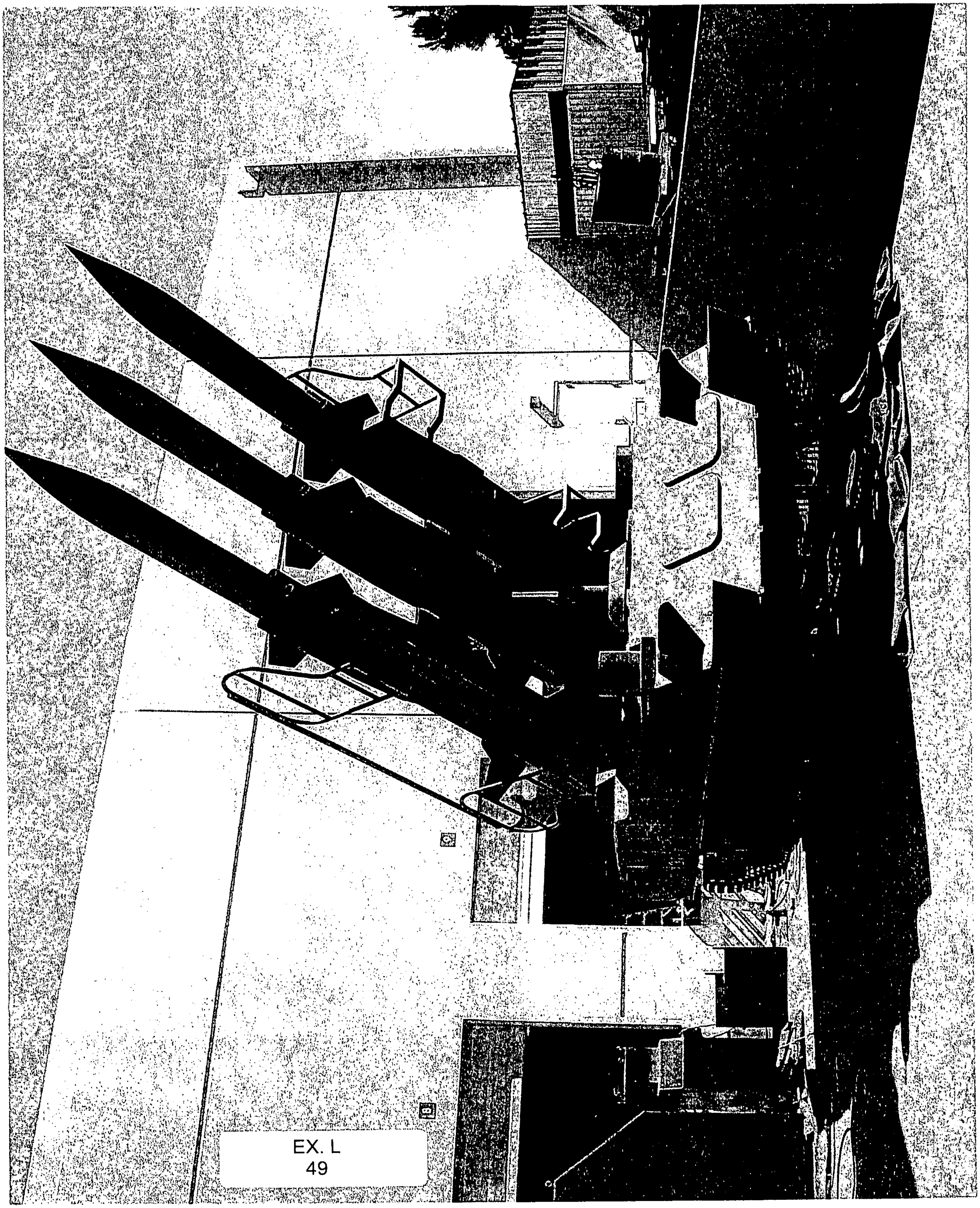
Michael I. Neil

MIN:km

cc: Mayor Jerry Sanders
City Attorney Michael Aguirre
Members of the City Council

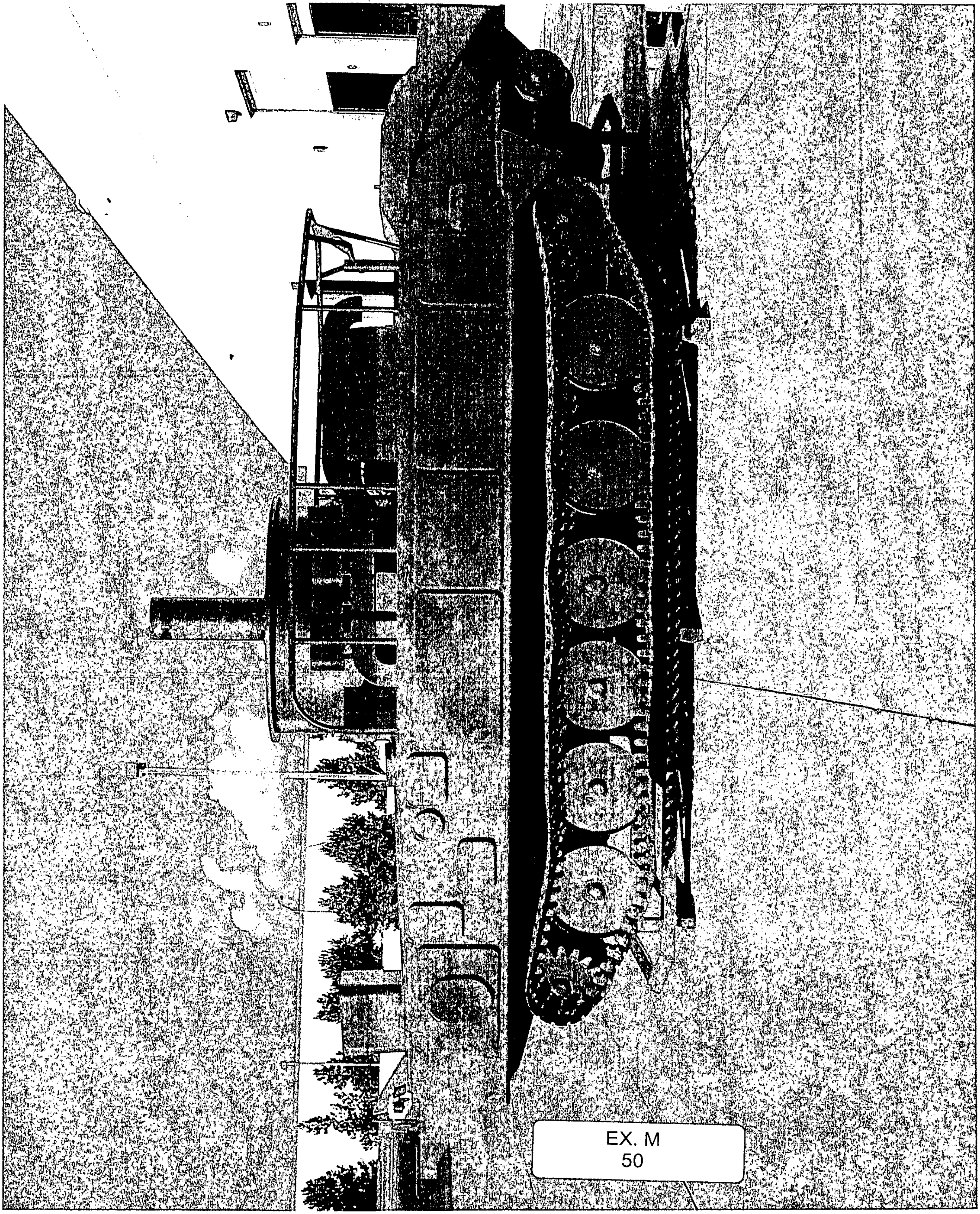
Attachment: Letter from Blackwater dated May 19, 2008

KMM9906 (2).DOC

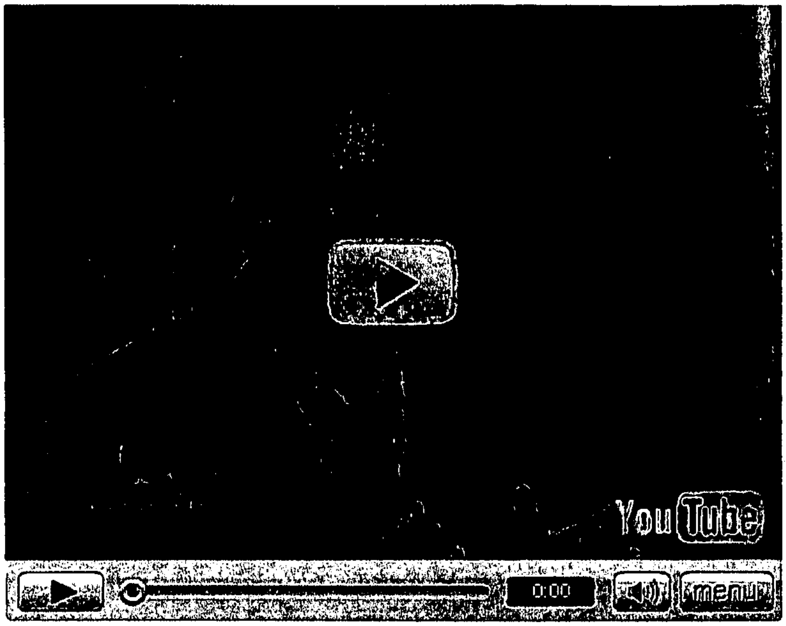


EX. L
49

EXHIBIT M



EX. M
50



Speaker/Interviews

Please Contact: Raymond Lutz
raylutz@CitizensOversight.org
619-820-5321
Bio of Raymond Lutz

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(You'll automatically get one if you donate, of course. But please let us know if you can use more than one!!)
We are accepting donations to help fund our battle with Blackwater and save Round Potrero Valley. Please visit our donation page.

Please sign up for our announcement list -- Sign the petition here!

I hereby register my opposition to the Blackwater facility in Otay Mesa which was permitted under the pseudonym of *Southwest Law Enforcement* and *Raven Development,* and dubbed a "vocational school." This facility proposes to perform firearm and guerilla-style paramilitary training without any additional licensing or permits.

Furthermore, I stand in opposition to the siting of any private military/mercenary training camp in the State of California, as such war profiteering is a prescription for endless wars and conflicts. Military training must be kept the responsibility of the military, with the requisite accountability to the public, and not turned over to unaccountable corporate interests.

(Will be provided to the San Diego City Council, Mayor of San Diego, the County Board of Supervisors, to the Governor, and to all CA Representatives and Senators.)

EX. N
51

Your submission will also subscribe you to a list for occassional instructions on how you can help to STOP BLACKWATER!

Email address:*

First name:*

Last name:

Zip or Postal Code:

Country:

Personalize your letter:

* required field

-- RaymondLutz - 19 Sep 2007

EX. N
52

EXHIBIT O

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Sonoma County DFA

Temecula Valley Democracy for America

Ventura County for Democracy

Constituency and Statewide Groups:

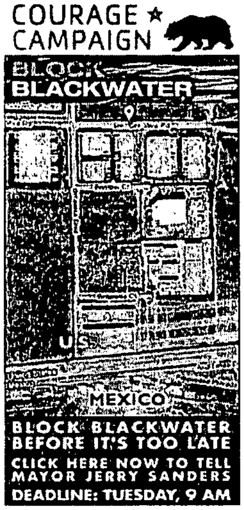
African Americans for Democracy

Asian Pacific Americans for Progress

Tell Jerry Sanders: Block Blackwater

by Lucas O'Connor [courtesy of Calitics - Front Page]

Full disclosure: I work for the Courage Campaign


COURAGE ★ CAMPAIGN
BLOCK BLACKWATER
U.S.
MEXICO
BLOCK BLACKWATER BEFORE IT'S TOO LATE
CLICK HERE NOW TO TELL MAYOR JERRY SANDERS
DEADLINE: TUESDAY, 9 AM

Mayor Jerry Sanders got what he asked for when he was elected in 2005. Not just the office, but unprecedented "strong mayor" control over the city's operation. He's had two and a half years, and as he runs for reelection, we have to ask whether he's lived up to the responsibility.

At a recent debate, Mayor Sanders let his frustration get the best of him over the substance, or perceived lack thereof, in the current campaign. Well if he wants to talk about issues, Blackwater is a good one. Steve Francis, a leading contender for mayor, has accused Jerry Sanders of "presiding over the largest pay-to-play system the city has ever seen." If Mayor Sanders wants to get substantive and prove that the good of the community is is his top priority, it's time he get involved in the absurd permit process that has- thus far- allowed Blackwater to waltz into the city and start unpacking within spitting distance of the border.

Earlier today, Courage Campaign partnered with Jess Durfee, the Chair of the San Diego Democratic Party, to introduce a petition calling on Mayor Sanders to launch a full investigation into the questionable process that's brought Blackwater to the City of San Diego. He asked for this responsibility- he still wants this responsibilty. It's time to deliver.

On the flip is the email that Jess Durfee sent to Courage Campaign's San Diego members today.
My name is Jess Durfee. I am the Chair of the San Diego County Democratic Party.

The Courage Campaign asked me to write this message to the people of San Diego about **Blackwater's shocking new plan to build a base of operations in Otay Mesa, just three blocks from the Mexican border.**

False pretenses. Bait-and-switch. Trojan horse. Take your pick of descriptions to explain Blackwater securing a city permit for its "vocational training school" -- a "school" that won't be open to the general public.

That's simply Blackwater's way of doing business. By using trojan-horse corporate shells like "Southwestern Law Enforcement" and "Raven Development Group" to obtain their permit, **Blackwater is using false pretenses to evade public scrutiny.**

The worst part? The "Blackwater bait-and-switch": Using Iraq profits to subsidize a base of operations in San Diego with millions of your tax dollars.

Enough is enough. It's time for San Diego's elected officials to take a stand and kick Blackwater out of San Diego County for good. If the people of Potrero can do it, so can we.

The one man standing in the way of Blackwater is Mayor Jerry Sanders. He has the power -- under San Diego's "strong mayor" system -- to launch a full investigation into the false pretenses Blackwater used to obtain a "vocational trade school" permit for their 61,600-square-foot facility.

I have written a letter to Mayor Sanders that asks him to take action immediately. To get the Mayor's attention, I am urging the citizens of San Diego to join me in signing it no later than **TUESDAY AT 9 AM.**

The sooner you sign on and spread the word to your friends, family and neighbors, the more signatures we'll have when we present this petition to Mayor Sanders on Tuesday:

http://www.couragecampaign.org/SandersLetter

We all know that Blackwater is the "Enron" of private security contractors, more than willing to exploit Californians in the pursuit of profit. **Do we really want these notorious mercenaries**

EX. O
53

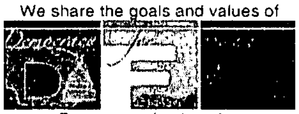
About California for Democracy

California for Democracy is an umbrella organization of local, regional and affinity groups and individuals who are aligned with the broad purposes of Democracy for America.

read more »

Democracy for America

We share the goals and values of



Democracy for America

California BlogWire

powered by: LEFTY BLOGS

Sacramento race for mayor, California Notes, 10:14 a.m.

Cheney at Coast Guard Graduation Brings Protesters, OB Rag, 10:14 a.m.

Fear and Loathing in Prime Time - Immigration Myths and Cable News, OB Rag, 10:14 a.m.

Anand Wins 5th Chess Oscar, The Mad Professah Lectures, 10:13 a.m.

Get Active With OCYD This Memorial Day Weekend!, The Liberal OC, 10:13 a.m.

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Why Blame Maldonado for the Mess Democrats Have in California's 15th S..., California Progress Report, 10:12 a.m.

Why does MSNBC love Obama so much?, Nite Swimming, 10:12 a.m.

The coal industry is spending $35 million or more to try to persuade u...., Down With Tyranny, 10:11 a.m.

80 Layoff Notices for Paraprofessionals Rescinded, Left in SF, 10:10 a.m.

LAT Baseline Poll on Gay Marriage - Better Than It Looks, Soapblox California, 10:09 a.m.

Latinos for America

Mainstreet Moms Oppose Bush (MMOB)

Seniors for America

as our neighbors, bait-and-switching San Diego with an eye to eventually landing border security contracts?

As I wrote to Mayor Sanders in the letter linked above:

> "This isn't the first time that Blackwater has tried to hold itself above the law, and it probably won't be the last. As ABC News recently reported, 'Blackwater has been accused of tax fraud, improper use of force, arms trafficking and overbilling connected to its work for the U.S. government in Iraq. A grand jury, federal prosecutors and congressional investigators are all currently probing allegations against the company.'

The letter goes on to ask Mayor Sanders to stand up for San Diego so we can stand up to Blackwater before they set up shop a stone's throw from the Tijuana International Airport. Please sign our letter today and ask your friends, family and neighbors to sign it as well before TUESDAY AT 9 AM:

http://www.couragecampaign.org/SandersLetter

As many Democrats, Republicans and Independents agree, Blackwater is undermining our troops in Iraq and our security at home. And now it appears to be using false pretenses to establish a dangerous foothold inside our community to privatize our border security operations. The only way we'll know is if our Mayor launches a full investigation immediately.

It's time for Mayor Sanders to stand up for San Diegans by standing up against Blackwater.

Please sign this letter to the Mayor today and tell your friends. Before it's too late.

Thank you for everything you are doing to make sure San Diego continues to be "America's Finest City".

Jess Durfee

Chair

San Diego County Democratic Party

P.S. Thank you to all the folks in San Diego who came out last Friday to Congressman Bob Filner's rally and press conference at the site of Blackwater's planned facility in Otay Mesa. We had a great turnout in what could be the beginning of a movement to finally kick Blackwater out of town for good and change San Diego politics forever.

To make this new era for progressive politics in San Diego possible, we need your support for our letter to Mayor Sanders. Please sign on and spread the word as soon as possible before we present your signatures to the Mayor on Tuesday:

http://www.couragecampaign.org/SandersLetter

Email this Digg This! Share on Facebook

Posted May 1st, 2008 by Syndicated in Calitics city of san diego durfee false pretenses full disclosure jerry sanders mayor jerry san diego county democratic party two and a half years

Read original article Login or register to post comments

Website hosted courtesy of BlueShifting.com

Wright look like a creampuff, Swiftspeech, 7:59 a.m.

Janet Napolitano for Vice President, Swiftspeech, 7:59 a.m.

Gore and Lenzi Respond to District Attorney's Office, People's Vanguard of Davis, 7:58 a.m.

The "Job Killer" Frame in California and What's Really Going On: Fear, California Progress Report, 7:57 a.m.

Green Business is Good Business in California, California Progress Report, 7:57 a.m.

McCAIN, REJECTED BY HIS SENATE COLLEAGUES, VICIOUSLY LASHES OUT AT SEN..., Down With Tyranny, 7:56 a.m.

Harvey Milk Back at City Hall, Left in SF, 7:56 a.m.

A Return Home from Iraq, Bill Hedrick for Congress Blog, 3:25 a.m.

ECCO Endorsements, The Liberal OC, 1:13 a.m.

I Wish I knew how to Get My Husband's Campaign on the Rec List, DailyKos (California), 1:12 a.m.

video of the day, Down With Tyranny, 1:11 a.m.

Teacher Appreciation Day at John Muir ES, Left in SF, 1:10 a.m.

Moths from Andal's Wallet, Soapblox California, 1:10 a.m.

Rest in Peace: Father Virgil Cordano, BlogaBarbara, Thu 11:03 p.m.

Hoa's newest reports raise even more questions, The Liberal OC, Thu 9:06 p.m.

Add your blog at LeftyBlogs.com

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EX. O
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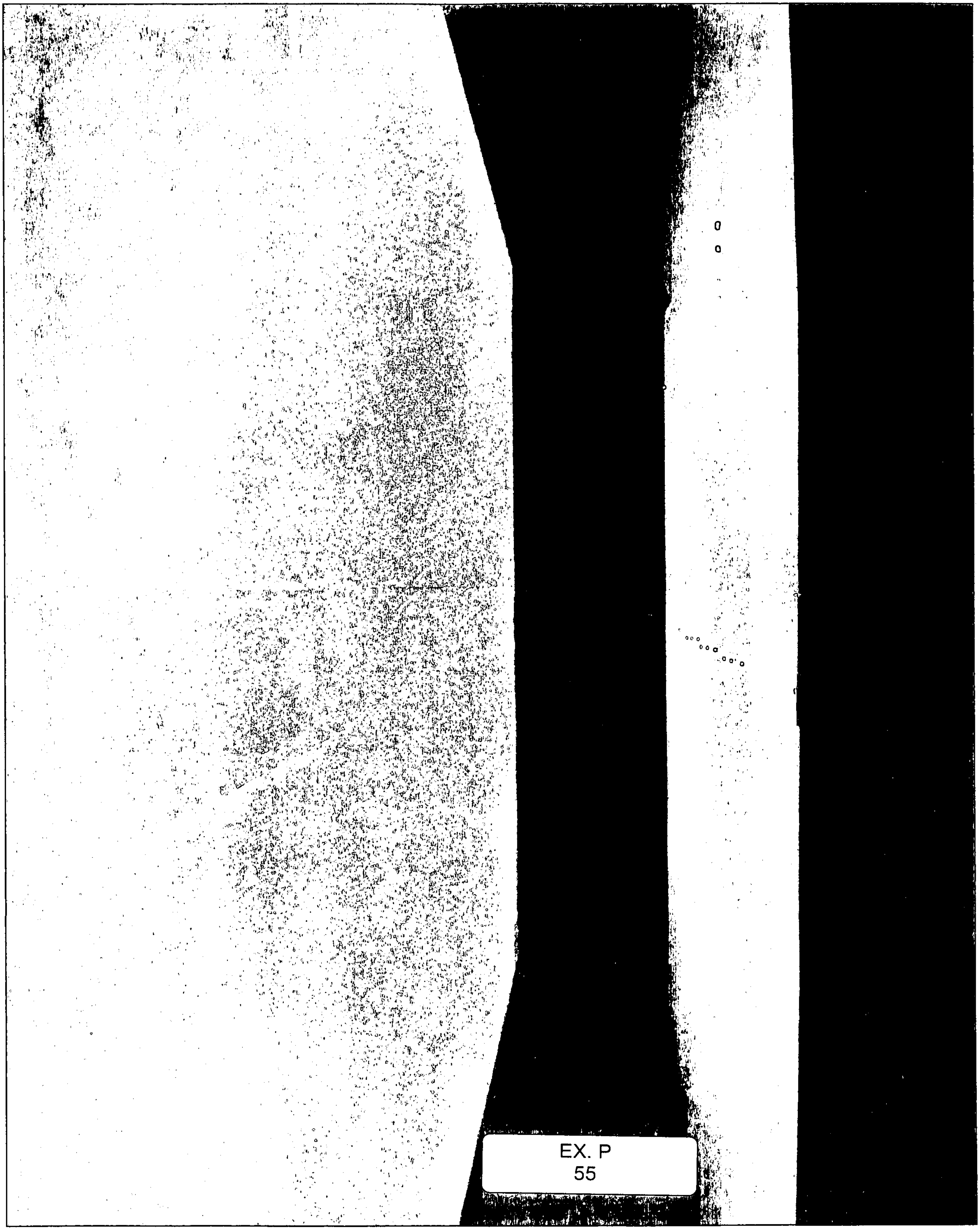
EXHIBIT P



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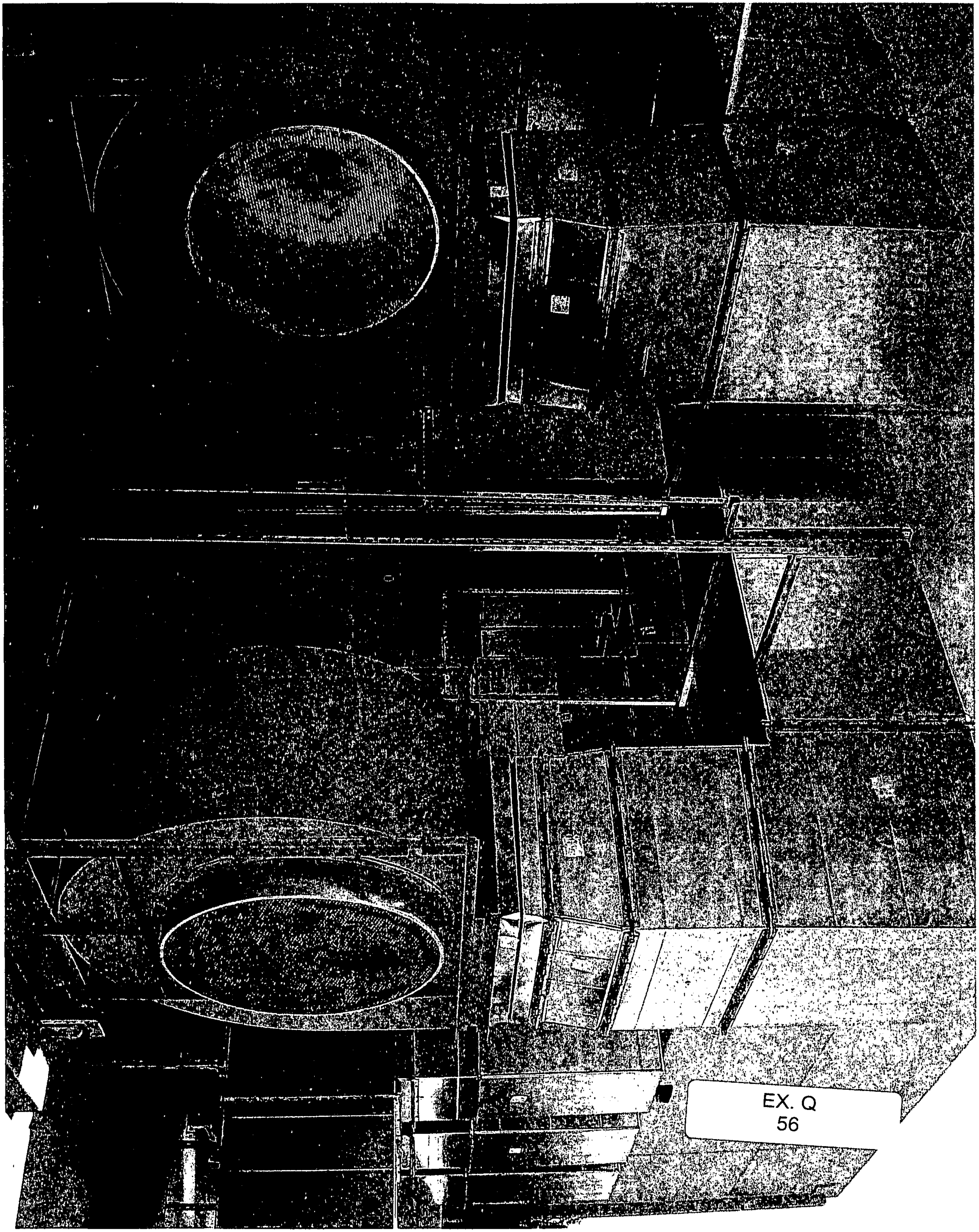

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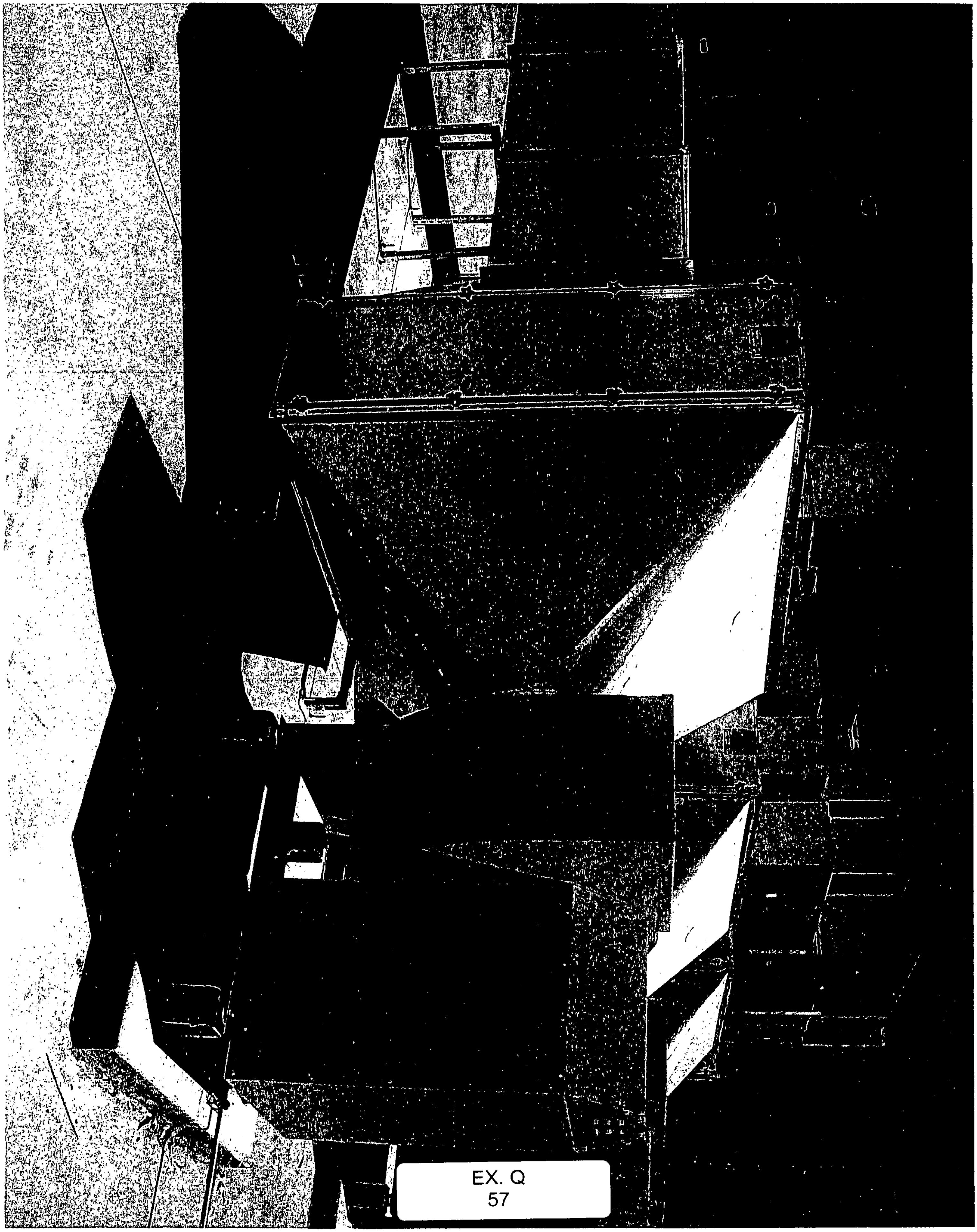

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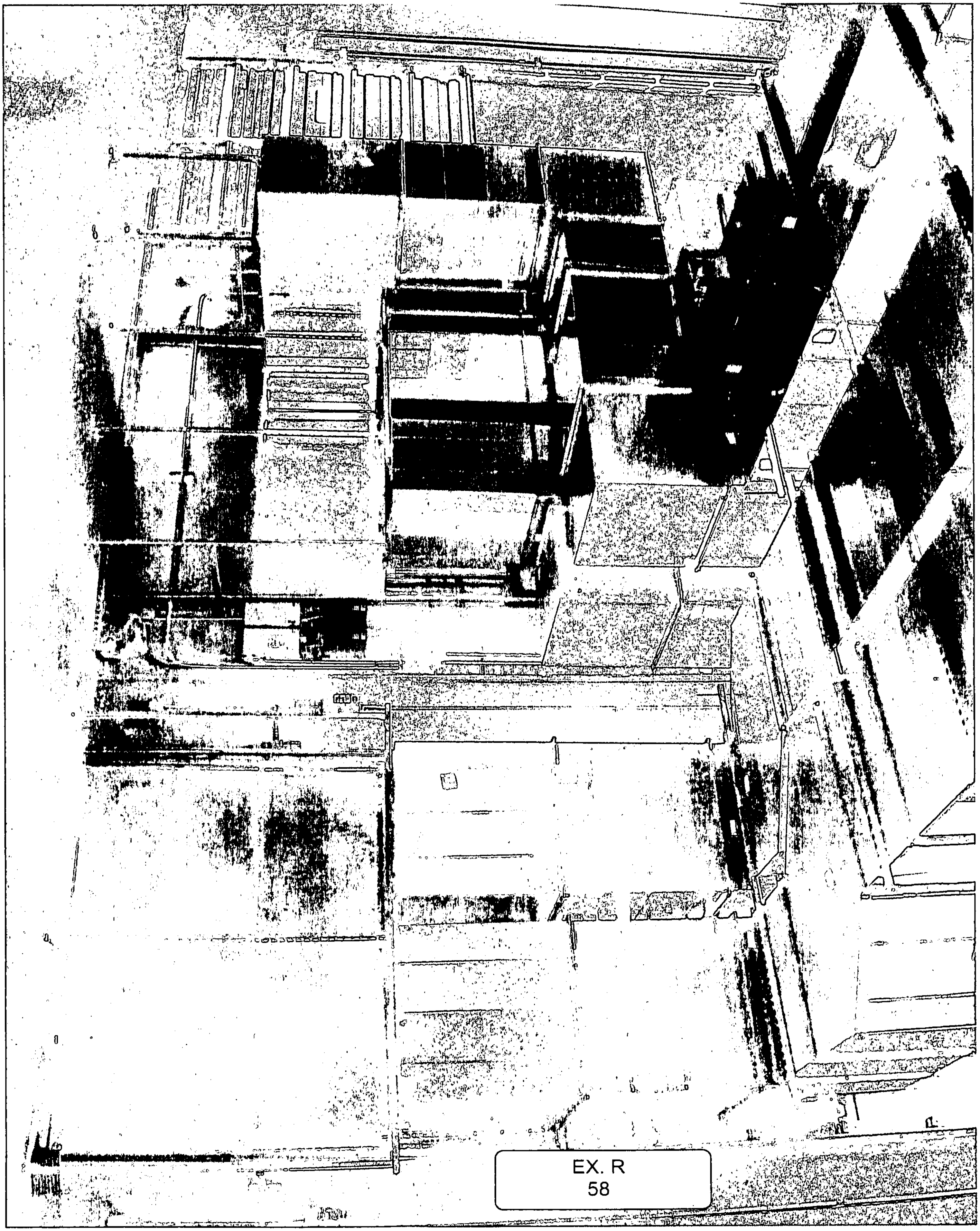
EXHIBIT R



EX. R
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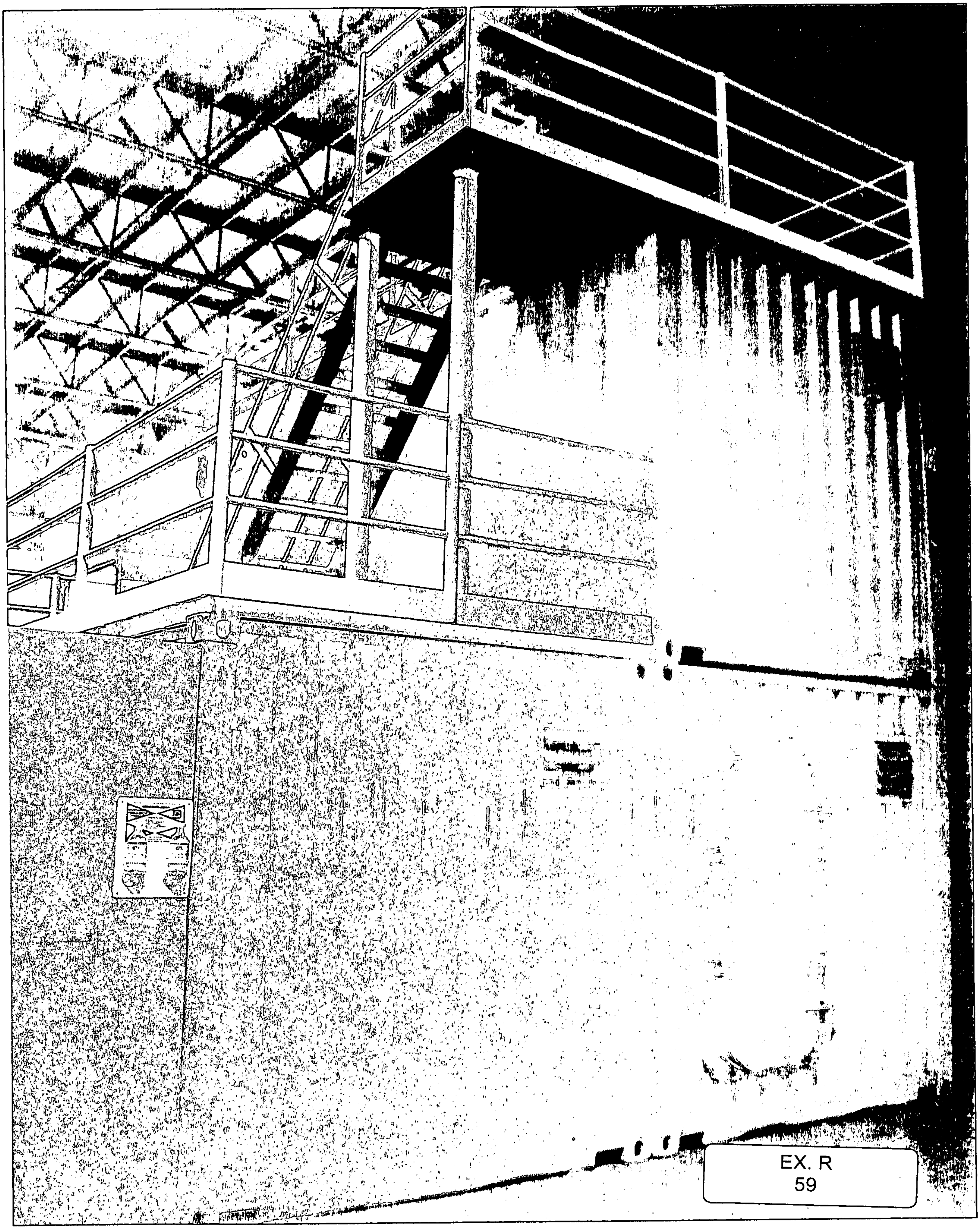

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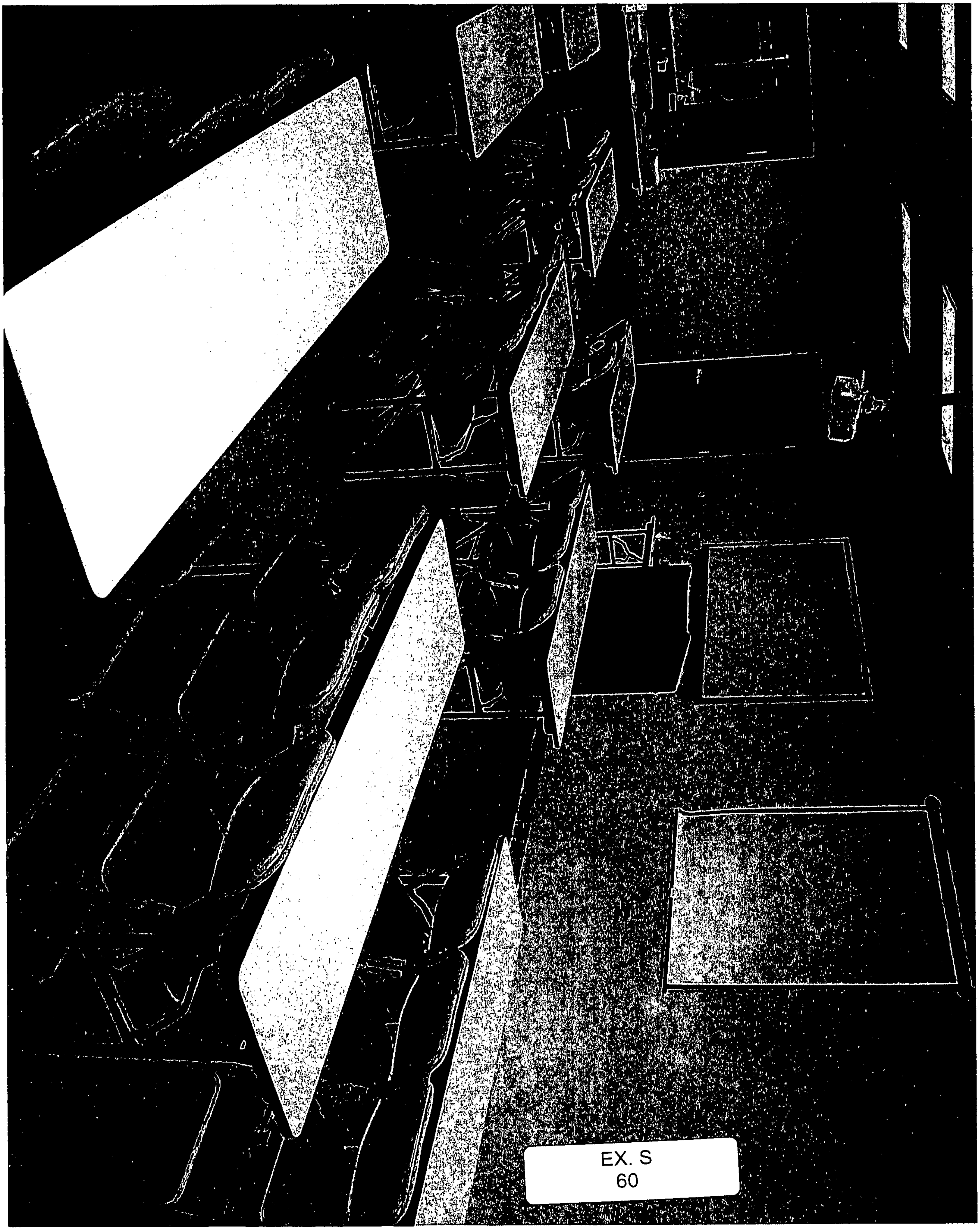
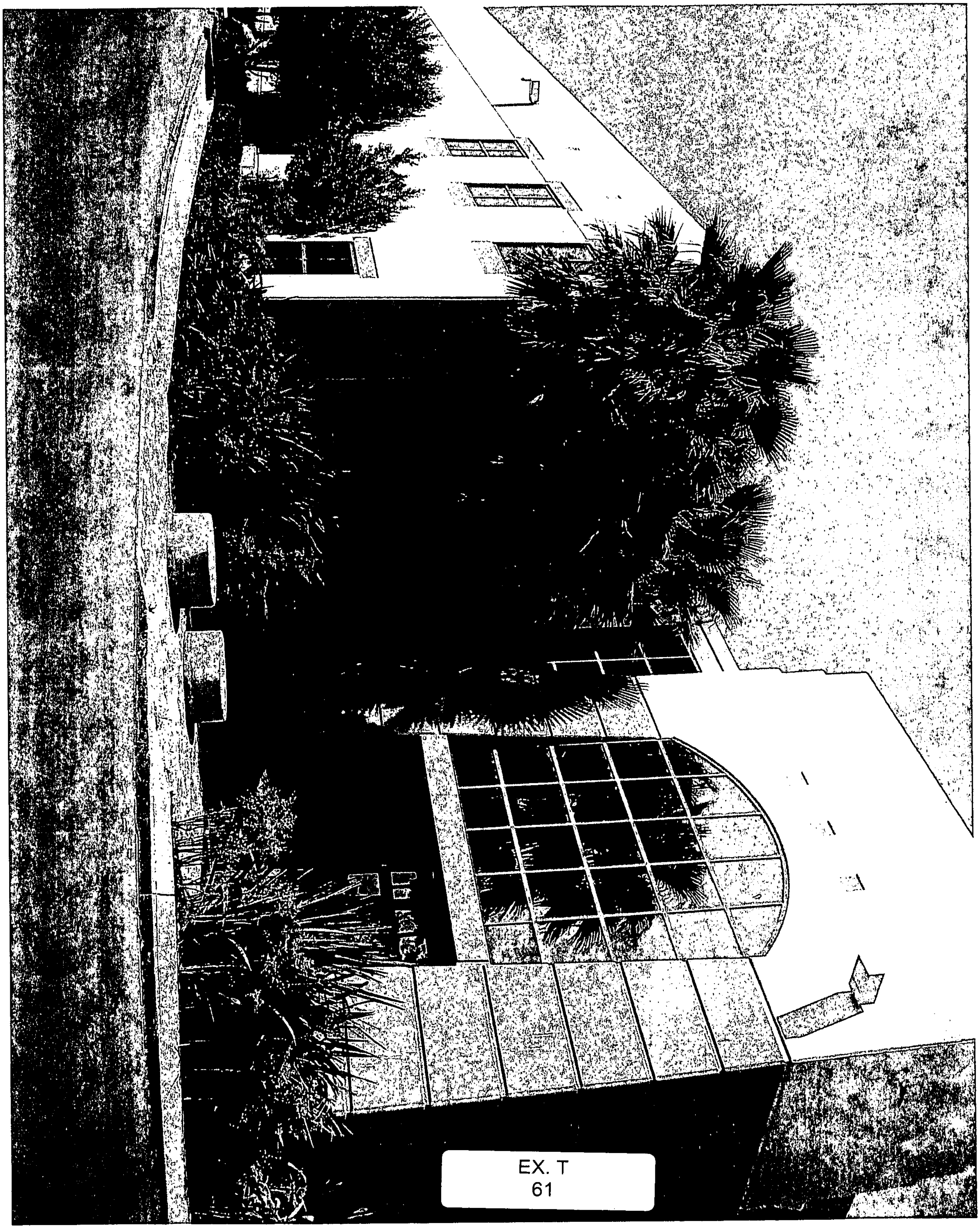
59



EX. S
60

EXHIBIT T



EX. T
61

EXHIBIT U

THE CITY OF SAN DIEGO

CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPT
DIVISION OF BUILDING AND SAFETY
9601 RIDGEHAVEN CT·SAN DIEGO·CALIFORNIA· 92123

INSPECTION RECORD

PLEASE PROVIDE INFORMATION BELOW WHEN SCHEDULING INSPECTIONS. INSPECTIONS MUST BE SCHEDULED AT (858) 581-7111 FROM 7:00 AM TO 10:00 PM. EVERY EFFORT WILL BE MADE TO RESPOND TO INSPECTION REQUESTS BY NO LATER THAN THE FOLLOWING WORKDAY.

CONTRACTOR/OWNER		APPROVAL DATE
TSA CONTRACTING.		3-19-08
WORK DESCRIPTION		
T.I		
OCCUPANCY	CONST TYPE	PROJECT # 150059

APPROVAL # (Comb/Struct)	APPROVAL # (Electrical)
529104	
APPROVAL # (Mechanical)	APPROVAL # (Plumbing)
JOB ADDRESS 7685 SIEMPRE VIVA RD.	

- SEQUENCE OF APPROVAL OF WORK ON THIS PROJECT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER.
- APPROVED PLANS MUST BE ON JOB FOR *ALL* INSPECTIONS.
- DSD/FIRE INSPECTORS *ONLY* TO SIGN THIS CARD.
- EACH STAGE OF WORK SHALL BE LEFT EXPOSED FOR INSPECTION AND BE APPROVED BEFORE COVERING.

	TYPE OF INSPECTION	DATE	INSPECTOR
UNDERGROUND	1 Sewer Service		
	2 Backwater Valve		
	3 Sanitary Plumbing Under Building		
	4 Water Service		
	5 Water Piping Under Building		
	6 Grounding Electrode System		
	7 Electrical Outside Of Building		
	8 Electrical Under Building		
	9 Gas Piping/Pressure		
	10 Storm Water System		
	11		

ANCHORS, INSERTS, & REINFORCEMENT TO BE ACCURATELY SECURED IN PLACE AT TIME OF FOUNDATION INSPECTION.

	TYPE OF INSPECTION	DATE	INSPECTOR
FOUNDATIONS	12 Piling(s)/ Caisson(s)/ Etc.		
	13 Footing(s)		
	14 Foundation Wall(s)		
	15 Grade Beam(s)		
	16 Slab(s)		
	17 Masonry Pre-grout- Lift 1 ___ Lift 2 ___		
	18 Wall Drainage System(s)		
	19 Public Improvements- Form Set		
	20 Pool Shell Bonding/Steel		
	21 Pool Deck Bonding/Steel		
	22 Pool Pre-plaster/Light Potting Compound		
	23 Disabled Access		
	24 Special Inspection(s)		
	25 Structural Observation (s)		
	26		

OBTAIN INSPECTION APPROVAL OF *ALL* WORK THAT WILL BE OBSCURED FROM VIEW BY SURFACE COVERINGS.

	TYPE OF INSPECTION	DATE	INSPECTOR
ELECTRICAL	27 Circuit Card		
	28 Service Equipment		
	29 Sub-Feed Equipment		
	30 Circuit(s)- Exterior		
	31 Circuit(s)- Interior		
	32 Exit Illumination System		
	33		
	34		

	TYPE OF INSPECTION	DATE	INSPECTOR
MECHANICAL & PLUMBING	35 Sanitary Plumbing		
	36 Water Piping		
	37 Gas Piping		
	38 Gas Pressure		
	39 Heating/Duct(s)/Vent(s)		
	40 Air Conditioning/Refrigeration		
	41 Environmental Air System(s)		
	42 "Built-Up" Tub(s) or Shower Pan(s)		
	43 Grease Duct(s)/Hood(s)		
	44 Grease Trap(s)		
	45 Storm Water System		
	46		
	47		

**** For Gas or Electric Meter Installation information/requirements, call SDG & E Company's Project Management Department at (619) 230-7800.*

DS-1798 (Revised 04/06)

	TYPE OF INSPECTION	DATE	INSPECTOR
STRUCTURAL FRAME	48 Exterior Wall Construction		
	49 Interior Wall Construction		
	50 Column(s) & Support(s)		
	51 Floor System(s)		
	52 Roof System(s)		
	53 Shear Wall(s)		
	54 Height Limit		
	55 Disabled Access		
	56 Special Inspection(s)		
	57 Structural Observation(s)		
	58		

ITEMS 59 THRU 65 TO BE INSPECTED AND APPROVED *PRIOR* TO INSTALLING INTERIOR WALL COVERINGS.

	TYPE OF INSPECTION	DATE	INSPECTOR
ENERGY CODE	59 Insulation- Attic(s)/Ceiling(s)/Soffit(s)		
	60 Insulation- Floor(s)		
	61 Insulation- Roof(s)		
	62 Insulation- Wall(s)/Sound Transmission		
	63 Fenestration (Door/Window Glazing)		
	64 Lighting- Mandatory Measures		
	65 Compliance Report(s)		
COVERINGS	66 Drywall		
	67 Exterior Lath		
	68 Interior Lath /Backer Board		
	69 Suspended Ceiling System		
	70		

REQUESTS FOR SITE DEVELOPMENT INSPECTIONS AS NOTED

	TYPE OF INSPECTION	DATE	INSPECTOR
SITE	71 Landscape- Paving- (858) 627-3331		
	72 Lighting- Offsite Impact- (858) 627-3331		
	73 Mitigation Monitoring- (858) 627-3360		

REQUESTS FOR FIRE DEPARTMENT INSPECTIONS (619) 446-5440

	TYPE OF INSPECTION	DATE	INSPECTOR
FIRE DEPARTMENT INSPECTIONS	74 Alarm(s)- Rough		
	75 Alarm(s)- Final		
	76 Extinguishing System(s)		
	77 Hazardous Material(s)		
	78 Sprinkler(s)- Rough		
	79 Sprinkler(s)- Final		
	80 Underground- Flush		
	81 Underground- Hydro		
	82 Underground- Visual		
	83		
	84		

CALL FOR FINAL INSPECTION WHEN *ALL* APPROPRIATE ITEMS PERTAINING TO THIS PROJECT HAVE BEEN APPROVED.

	TYPE OF INSPECTION	DATE	INSPECTOR
FINAL INSPECTIONS	85 Fire Inspection - (619) 446-5440	3/25/08	[signature]
	86 Fire Dept/Haz Mat-Tanks-(619) 533-4400		
	87 Landscape/Mitigation - (858) 627-3331		
	88 Engr Public Improvements-(858)627-3200		
	89 Electrical	3/21/08	Connell
	90 AC/Heating/Refrigeration		
	91 Range Hood(s)/Vent(s)		
	92 Plumbing/Gas		
	93 Disabled Access		
	94 Special Insp/Struct Obs/Final Report(s)		
	95 Structural		
	96 Approved to Occupy		
	97 Certificate of Occupancy	4/30/8	[signature]

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

EX. U
62

CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPT
DIVISION OF BUILDING AND SAFETY
9601 RIDGEHAVEN CT·SAN DIEGO·CALIFORNIA· 92123

THE CITY OF SAN DIEGO

INSPECTION RECORD

[illegible]

CONTRACTOR/OWNER	APPROVAL DATE 4/7/08
WORK DESCRIPTION	
OCCUPANCY / CONST TYPE	PROJECT # 150059

APPROVAL # (Comb/Struct)	APPROVAL # (Electrical)
APPROVAL # (Mechanical) 539694	APPROVAL # (Plumbing)
JOB ADDRESS 7685 Siempre Viva Rd.	

- SEQUENCE OF APPROVAL OF WORK ON THIS PROJECT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER.
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	36 Water Piping		
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	38 Gas Pressure		
	39 Heating/Duct(s)/Vent(s)	4-8-08	Hal [signature]
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DS-1798 (Revised 04/06)

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	53 Shear Wall(s)		
	54 Height Limit		
	55 Disabled Access		
	56 Special Inspection(s)		
	57 Structural Observation(s)		
	58 Duct Truss support	4/30/8	[signature]

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	91 Range Hood(s)/Vent(s)	5-1-08	Hal [signature]
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	93 Disabled Access		
	94 Special Insp/Struct Obs/Final Report(s)		
	95 Structural		
	96 Approved to Occupy		
	97 Certificate of Occupancy	4/30/8	[signature]

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

EX. U
63

Legacy BPIS Permits

THE CITY OF SAN DIEGO
Development Services
1222 First Avenue, San Diego, CA 92101-4154

5/22/08 2:07 pm

Page 1 of 2

Y41-920-01

Project Information

Plan File: A-101048-98 Status: A OTC: ☐ Submitted: 02/11/1998
Contractor Info: DELANEY CONSTRUCTION CO Worker's Comp. Ins: STATE FUND Owner Builder: ☐
License: 550127 Phone: (619)753-7940 Policy: 1235890-94 CLS:
Expires: Expires: 04/09/1998 BTC: 82007354

Purpose of Permit

Address: 005590 RUFFIN RD Address ID: 336635 APN: 369-191-2800
Permit Num: B-200610-98 Status: F Issued: 02/26/1998 Structure: 001
Comments: *STRUCTURAL PLAN CHECKER: PLEASE PROVIDE VALUATION.* Expires: 10/10/1999 BC Code: 4380
Finaled: 04/13/1999 BC Desc: ADD/ALT TENANT IMPROVEMENTS

Desc. of Work: INTERIOR REMODEL (NEW WALLS,ELEC,PLMG)FOR EXISTING TRADE SCHOOL. *SEPARATE PERMITS REQUIRED FOR ELECTRICAL, MECHANICAL OR PLUMBING WORK.*

Structure Information

Lot: Model/Desc: INT. REMODEL Type of Constr: V-N Insp Cat: S Soil:

Bedrooms: Stories: OCC Group:
Studio: 0 Permitted: Units: 0 OCC Load:
1: 0 Flr Area:
2: 0
3: 0 Total: Units: 0 Plan Chech Fee: $411.77
4: 0 Flr Area: Valuation: Init: $65,000.00
5: 0 Bldg Area: Final: $65,000.00

Inspection Status

Inspection Type		Scheduled	By	Complete	Init	Status	Other	Remarks
22	FOOTINGS	02/27/1998		02/27/1998	JMR	F		STOP WK/ NO CITY
22	FOOTINGS	03/02/1998		03/02/1998	RWS	P		
26	MASONRY, PRE-GROUT	03/09/1998		03/09/1998	LFB	P		1ST LIFT
26	MASONRY, PRE-GROUT	03/12/1998		03/12/1998	DAF	P		2ND LIFT
26	MASONRY, PRE-GROUT	03/16/1998		03/16/1998	RWS	P		ANOP
26	MASONRY, PRE-GROUT	03/18/1998		03/18/1998	LFB	P		TOP OUT
38	ROOF SYSTEM	05/12/1998		05/12/1998	LFB	F		PL CK REQ'D
39	ALL FRAMING	05/06/1998		05/06/1998	LFB	P		
83	DRYWALL	04/30/1998		04/30/1998	LFB	P		ANOP
90	FINAL	10/02/1998		10/02/1998	LFB	F		IN-13
99	FINAL	05/14/1998		05/14/1998	LFB	P		
99	FINAL	04/13/1999		04/13/1999	LFB	P		

Project Fee Calculation

Qty	Description	Fee	Fund	Account	Paid	Key
1	< ACCESS PC FEE >	$20.59	41300	73419	$20.59	AC01
1	< APPLICATION FEE >	$80.00	41300	73528	$80.00	AP01
1	PLAN CHECK FEES	$411.77	41300	73411	$411.77	PC01
1	FD HAZMAT PLAN CHECK	$61.00	100	77316	$61.00	PC10
1	EXPRESS PLAN CHECK FEE	$270.00	41300	73411	$270.00	PC14
1	SIGN APPLICATION FEE	$0.00	41300	73811	$0.00	PR09
1	PR2000 SIC FIRE	$3.05	41302	77085	$3.05	SR03
1	PR2000 SIC DSD PLNCHK	$13.50	41302	77082	$13.50	SR04

EX. V
64

Legacy BPIS Permits

THE CITY OF SAN DIEGO
Development Services
1222 First Avenue, San Diego, CA 92101-4154

5/22/08 2:07 pm

Y41-920-01

Additional Info for Plan File: A-101048-98 **Permit: B-200610-98**

Permit Fee Calculation

Qty	Description	Fee	Fund	Account	Paid	Key
1	< ACCESS PC FEE >	$20.59	41300	73419	$20.59	AC01
1	ACCESS INSPECTION FEE	$31.67	41300	73427	$31.67	AC03
1	< APPLICATION FEE >	$80.00	41300	73528	$80.00	AP01
1	BUILDING PERMIT FEE	$633.50	41300	73422	$633.50	B001
1	HAZARDOUS MATERIALS FE	$23.00	41300	73428	$23.00	HM01
0	REINSPECTION FEE	$0.00	41300	73422	$0.00	RI01
1	PR2000 SIC OTHER PC	$1.03	41302	77081	$1.03	SR07
1	PR2000 SIC DSD PERMIT	$34.41	41302	77081	$34.41	SR08
1	PR2000 SIC PLAN CHECK	$20.59	41302	77082	$20.59	SR09
1	STATE FEE (NON-RES.)	$9.75	63010	77941	$9.75	ST02
1	SEISMIC FEE (NON-RES.)	$3.90	63085	77941	$3.90	ST04

Project Fee Summary

Invoice No	Amount	Printed	Init	Payment Time	Cashier	ST	Revenue Date
0006411 98	$1,617.76	02/26/1998	DXV	02/26/1998 15:01	HFW	P	02/27/1998

Total Fees Incurred: $1,617.76 **Amount Paid To Date:** $1,617.76

Final Clearance Checklist

Clearance	Required	Approved	Appr. Date	Init	Comments	Key
ADMIN HOLD	☐	☐	10/01/1998	CJC	NOT FINALED	HOLD
MASONRY	☐	☐	03/05/1998	WHS	F'M= 1800PSI	MASN
REINSP FEE DUE	☐	☐			PAYMENT-PENDING AS OF 02/27/98	REIN
FINL S.I. REPRT	☐	☐	03/05/1998	WHS		SPIR
MASONRY SP.INSP	☒	☒	03/05/1998	MWS	NOT REQD@TRUCK DOOR INFILL-P/A	SPI1

Clearance Checklist

Clearance	Required	Approved	Appr. Date	Init	Comments
FIRE DPT HAZMAT	☒	☒	02/11/1998	MXD	F1/B/M
FLOOD PLAIN ENG	☒	☒	02/12/1998	RJH	FEMA PANEL 1607, ZONE X
MICROFILM PLANS	☒	☒	03/10/2000	SYS	ROLL: A3725 FRAME: 0058
MICROFILM CALCS	☒	☒	11/19/1999	SYS	ROLL: B1362 FRAME: 0726
OTC PLN CHK ELE	☒	☒	02/26/1998	DXV	PER STAMP ON PLNS
OTC PLNCHK FIRE	☐	☐	02/26/1998	DXV	
OTC PLN CHK MCH	☒	☒	02/26/1998	AZG	(1)HVAC UNIT REPLACEMENT W/SAME
PERMIT SERVICES	☒	☒	02/26/1998	JJI	B. WHARTON
SPEC INSP AGRMT	☒	☒	02/26/1998	DXV	
STRUCTURAL	☒	☒	02/26/1998	IYH	3 EXPRESS HOURS
WORKERS' COMP	☒	☒	02/26/1998	DXV	
WTR&SWR PERMITS	☒	☒	02/26/1998	DXV	NSSQ 88571 CREDIT FROM 88057
BID ZONING	☒	☒	02/26/1998	JJI	COMPLIES PER B. ERTLE

EX. V
65

Permit ID	Description	Permit Number	Application Date	Approved Date	Approved By	Original APN
1472264	Bldg Pmts - BPIS	P-800450-98 001 P-800450-98	1/16/1998			369-191-2800
1473859	Bldg Pmts - BPIS	M-700998-99 001 M-700998-99	4/13/1999	5/13/1999		369-191-2800
1576620	Bldg Pmts - BPIS	M-700900-98 001 M-700900-98	4/2/1998	5/12/1998		369-191-2800
1722596	Bldg Pmts - BPIS	A-101048-98 001 B-200610-98	2/11/1998	4/13/1999		369-191-2800
1960036	Bldg Pmts - BPIS	E-500372-98 001 E-500372-98	1/23/1998	3/11/1998		369-191-2800
416845	Fire (Annual)	91008338 989 025		5/23/2001	9100833	369-191-2800
416846	Fire (Annual)	91008338 989 020		5/23/2001	9100833	369-191-2800
416847	Fire (Annual)	91008338 989 015		5/23/2001	9100833	369-191-2800
416848	Fire (Annual)	91008338 988 030		4/30/2002	9100833	369-191-2800
416849	Fire (Annual)	91008338 988 025		4/30/2002	9100833	369-191-2800
416850	Fire (Annual)	91008338 988 020		4/30/2002	9100833	369-191-2800
416851	Fire (Annual)	91008338 987 030			9100833	369-191-2800
416852	Fire (Annual)	91008338 987 025			9100833	369-191-2800
416853	Fire (Annual)	91008338 987 020			9100833	369-191-2800
439793	Sign Pmts - Y25	A 0344130 A 00018556	3/18/1991			369-191-2800
1497973	Bldg Pmts - BPIS	P-801570-98 001 P-801570-98	3/5/1998	9/30/1998		369-191-2800
1754626	Bldg Pmts - BPIS	A-100296-98 001 B-200181-98	1/13/1998	4/21/1998		369-191-2800
1937931	Bldg Pmts - BPIS	E-501254-98 001 E-501254-98	3/11/1998	7/16/1998		369-191-2800

Parcel Information Report

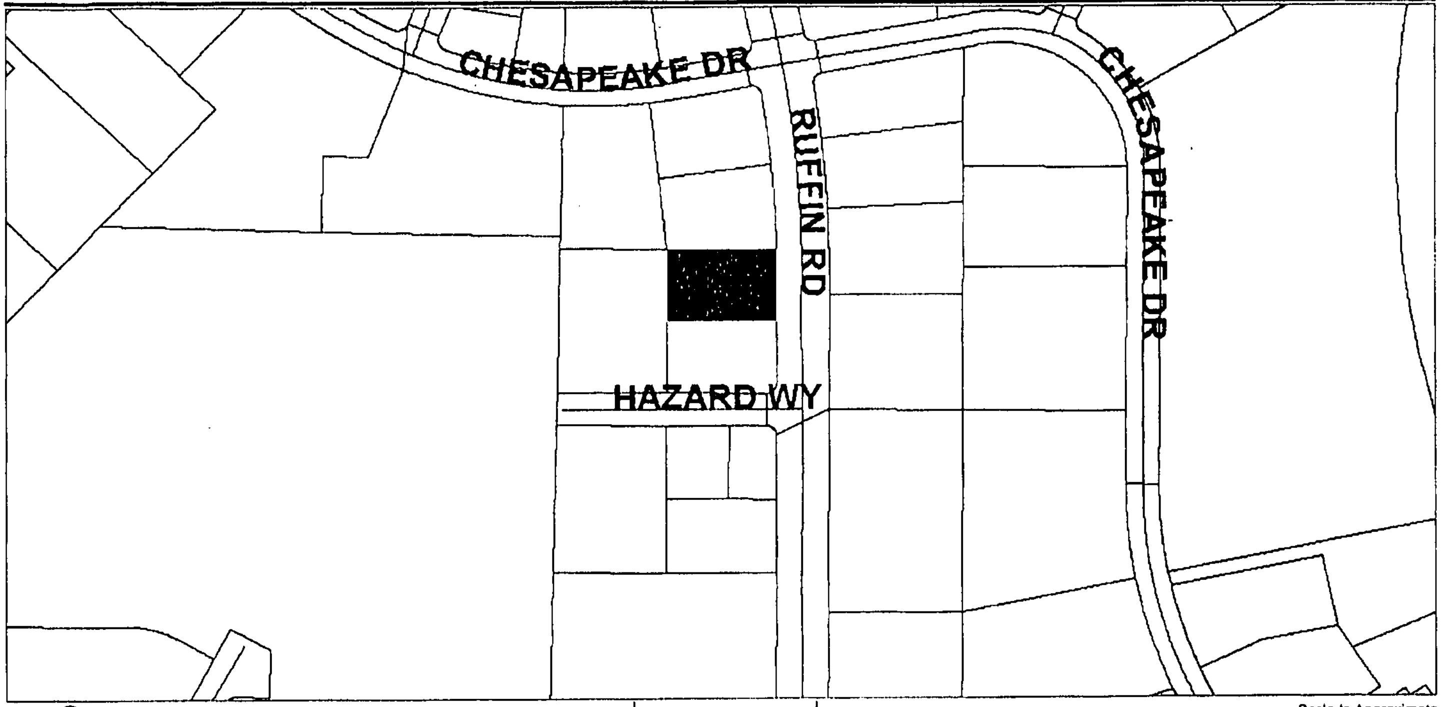
Report Number 101

THE CITY OF SAN DIEGO
Development Services
1222 First Avenue, San Diego, CA 92101-4154

244- 1731

5/22/2008 13:38:13

Page 1 of 1



Map Layers Included In Report

Description	Visible	Transparent	Has Intersecting Features
Roads	☑		No
Freeways	☑		No
Parcels	☑	☑	Yes

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Intersecting Features

Parcels

APN	Recordation	Owner Information	Valuation		Other
369-191-2800	Record: 009893 Date:2/25/1977	HAZARD R E CONTRACTING CO\	Land:	$331,492	Units: 0
	Legal:	P O BOX 229000*SAN DIEGO CA\	Imp:	$541,531	Taxable: ☑
Address(es)	LOT 18	SAN DIEGO CA 92192	Total:	$873,023	Own Occ: ☐
5590 RUFFIN RD					

~~74-0153~~

Commercial Park
~~PM~~ PM 6744

EX. V
67

P2K 02.01.61 JALVAREZ

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EXHIBIT W

Permit ID	Description	Permit Number	Application Date	Approved Date	Approved By	Original APN
443572	Sign Pmts - Y25	X 0025331 A 00000000	5/6/1992			436-020-3100
443573	Sign Pmts - Y25	X 0025332 A 00000000	5/6/1992			436-020-3100
443574	Sign Pmts - Y25	X 0025333 A 00000000	5/6/1992			436-020-3100
443575	Sign Pmts - Y25	A 0007004 A 00080220	12/3/1992			436-020-3100
443576	Sign Pmts - Y25	A 0165390 A 00009775	5/6/1992			436-020-3100
443577	Sign Pmts - Y25	A 0165390 B 00023141	5/6/1992			436-020-3100
1432808	Bldg Pmts - BPIS	E-005076-93 001 E-005076-93	11/23/1993	2/10/1994		436-020-3100
1433907	Bldg Pmts - BPIS	P-006388-93 001 P-006388-93	11/23/1993	12/23/1993		436-020-3100
1431553	Bldg Pmts - BPIS	E-003662-91 001 E-003662-91	8/7/1991	11/6/1991		436-020-3100
1614353	Bldg Pmts - BPIS	A-111016-00 001 B-200520-01	9/27/2000	3/15/2002		436-020-3100
1607342	Bldg Pmts - BPIS	A-004170-91 001 B-002267-91	6/5/1991	4/21/1992		436-020-3100
1776807	Bldg Pmts - BPIS	P-005639-91 001 P-005639-91	8/27/1991	11/7/1991		436-020-3100
1810215	Bldg Pmts - BPIS	M-003062-93 001 M-003062-93	11/23/1993	2/11/1994		436-020-3100
418687	Fire (Annual)	91008981 989 025		12/30/1998	9100898	436-020-3100
418688	Fire (Annual)	91008981 988 025		1/7/2000	9100898	436-020-3100
418689	Fire (Annual)	91008981 987 020		12/11/2000	9100898	436-020-3100
418690	Fire (Annual)	92001071 988 020		11/15/2001	9200107	436-020-3100
418691	Fire (Annual)	92001071 987 015		11/20/2002	9200107	436-020-3100
1549295	Bldg Pmts - BPIS	M-002690-91 001 M-002690-91	10/22/1991	11/7/1991		436-020-3100
1654732	Bldg Pmts - BPIS	M-700151-02 001 M-700151-02	1/16/2002	1/22/2002		436-020-3100
1688733	Bldg Pmts - BPIS	E-502543-01 001 E-502543-01	5/18/2001	3/15/2002		436-020-3100
1832667	Bldg Pmts - BPIS	A-007369-93 001 B-003495-93	11/10/1993	4/14/1994		436-020-3100
1887819	Bldg Pmts - BPIS	P-804086-01 001 P-804086-01	5/18/2001	1/18/2002		436-020-3100

Parcel Information Report

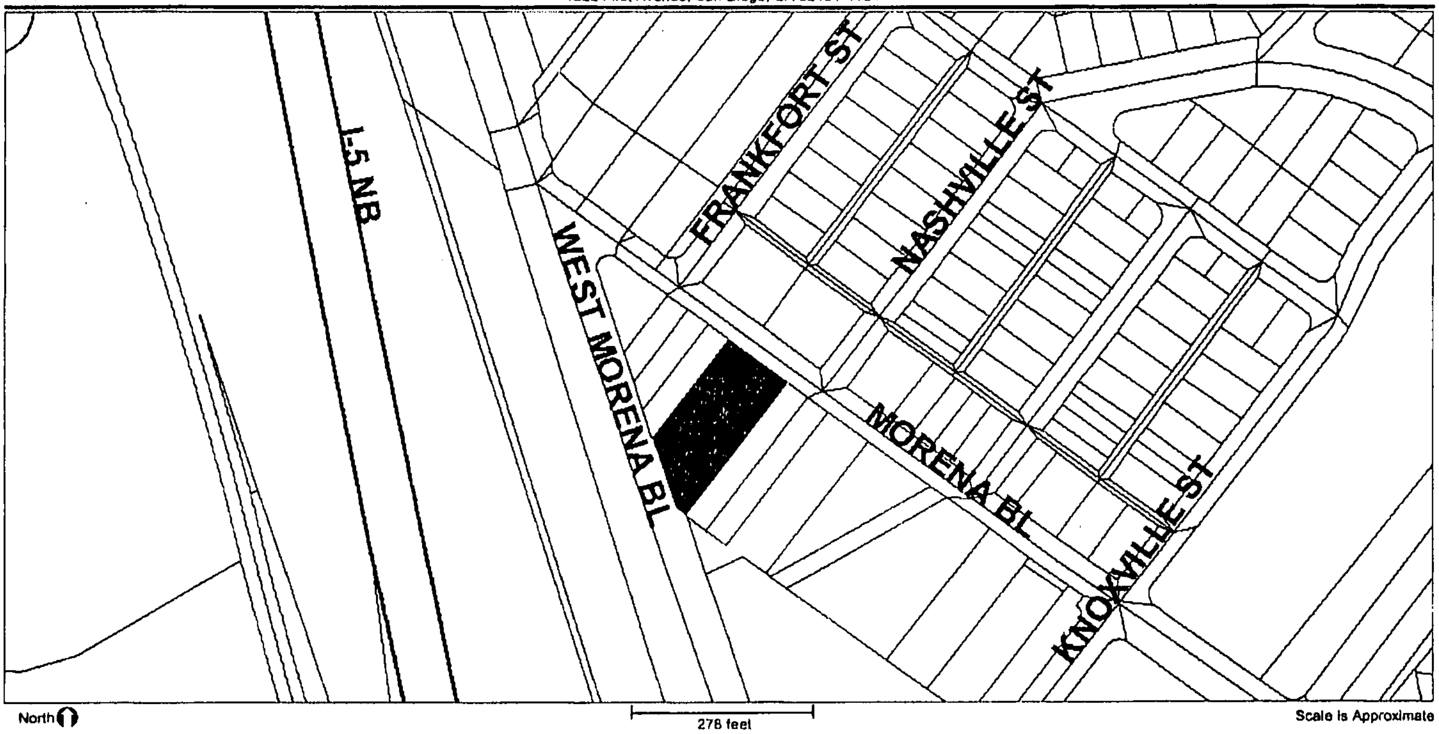
THE CITY OF SAN DIEGO
Development Services
1222 First Avenue, San Diego, CA 92101-4154

219-1708
222-1706

5/22/2008 13:37:03

Report Number 101

Page 1 of 1



Map Layers Included In Report

Description	Visible	Transparent	Has Intersecting Features
Roads	☑		No
Freeways	☑		No
Parcels	☑	☑	Yes

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Intersecting Features

Parcels

APN	Recordation	Owner Information	Valuation	Other
436-020-3100	Record: 906397 Date:9/27/2006	LAROSSE MARTA E TRUST C 10-19-84*MMSC/O HERRIN GROUP INC	Land: $624,283	Units: 1
	Legal:	2055 3RD AVE #200*SAN DIEGO CA\	Imp: $1,772,751	Taxable: ☑
Address(es)	LOT 256 DOC159888&DOC169	92101	Total: $2,397,034	Own Occ: ☐
1510 MORENA BL				

86-0557
C-2247
C-14009
C-128111
C-5995

C-16974

EX. W
69

P2K 02.01.61

JALVAREZ

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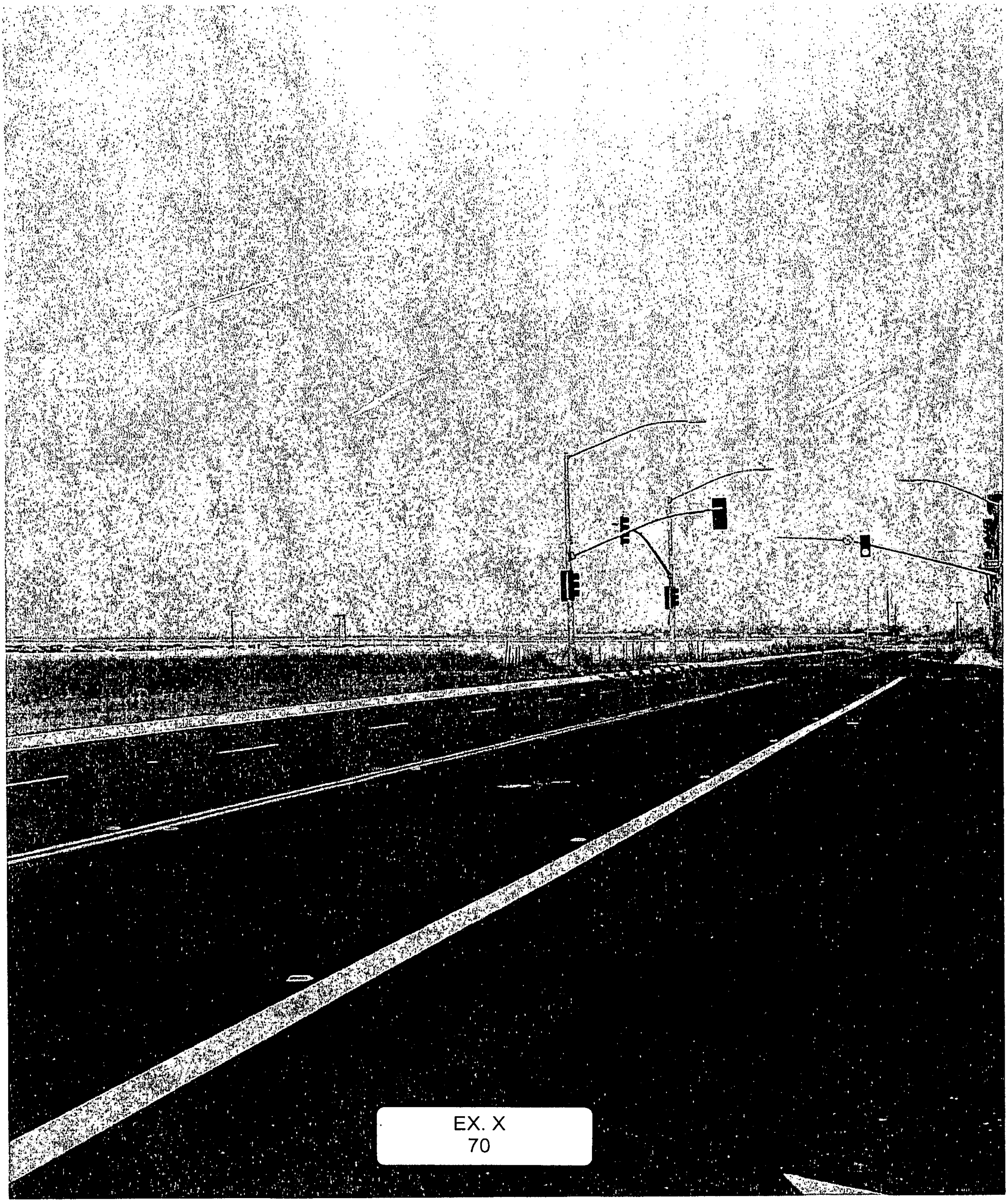

EX. X
70

EXHIBIT Y

THE CITY OF SAN DIEGO

May 22, 2008

John Nadolenco
Mayer Brown LLP
350 South Grand Ave.
25th Floor
Los Angeles, CA 90071-1503

Michael Neil
Neil, Dymott, Frank, McFall & Trexler
1010 2nd Ave., Ste. 2500
San Diego, CA 92101-4959

Mssrs. Nadolenco and Neil:

The Mayor's office has received your letters dated May 19, 2008 and May 20, 2008 in which you dispute the analysis and findings of the City Attorney in relation to your client, Blackwater Worldwide, and the recommendation of the City Attorney that steps be taken to prevent the opening of your client's facility in Otay Mesa.

As you are now aware, the Director of Development Services has halted the issuance of occupancy permits for this facility based on the advice of the City Attorney in the above mentioned memorandum.

This is a very serious matter and in keeping with the assurance of the City Attorney that their office "is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate", I have requested that the City Attorney respond to your legal analysis and arguments.

Sincerely,

Jay M. Goldstone
Chief Operating Officer

JG/pr

Cc: Scott Peters, Council President
Kevin Faulconer, Councilmember

DIVERSITY

EX. Y
71

Toni Atkins, Councilmember
Anthony Young, Councilmember
Brian Maienshein, Councilmember
Donna Frye, Councilmember
Jim Madaffer, Councilmember
Ben Hueso, Councilmember
Michael Aguirre, City Attorney
William Anderson, Deputy Chief Administrative Officer
Kelly Broughton, Director, Development Services Department
Afsaneh Ahmadi, Chief Building Official

EXHIBIT Z

[redacted]

From: [redacted]
Sent: Monday, May 26, 2008 2:16 PM
To: [redacted]
Subject: Fw: [Blackwater] Blackwater Spin: BW Addresses QuestionsConcerningSan Diego Training Facility

------Original Message------
From: GreggR44
To: Susan Friedman
To: Karen Pomer
Cc: blackwater@citizensoversight.org
Sent: May 26, 2008 9:20 AM
Subject: Re: [Blackwater] Blackwater Spin: BW Addresses QuestionsConcerningSan Diego Training Facility

In addition, what Bonfiglio is saying doesn't seem to be in agreement with what City Officials are saying (or not saying) and it would be interesting to get these stories squared. If Broughton knew he was dealing with Blackwater, that isn't what I'm seeing him saying, which would suggest that somebody is lying. Broughton said the permit was given the okay without much review because there wasn't anything that required any kind of investigation. If so, then who was meeting with all of these Blackwater Polo shirt clad people at the site etc?

And we 2nd and 3rd Susan's last point. We don't care if it's all legal and hunky dory, WE DON'T WANT BLACKWATER. Period. At all. Anywhere. It isn't the type of business necessarily, not that I'm in favor of private security companies training the military (maybe we should spend more money training our own troops instead of the hapless Iraqi police forces, eh?), but Blackwater, the murdering, corrupt, unethical, immoral, unaccountable, favoritism fueled corporation specifically that we don't want. We don't want their blood money as taxes, we don't want their ethos, their world view, their business view, their uber patriotic Erik Prince mentality, we don't want their greasy palms in the BBB or the Rock and Roll Marathon, or anywhere else for that matter.

----- Original Message -----
From: Susan Friedman <mailto:susanmfriedman@gmail.com>
To: Karen Pomer <mailto:krpomer@gmail.com>
Cc: blackwater@citizensoversight.org
Sent: Friday, May 23, 2008 6:38 AM
Subject: Re: [Blackwater] Blackwater Spin: BW Addresses Questions ConcerningSan Diego Training Facility

One point - and there are many more, however, the facilities mentioned by Bonfiglio that set "precedence" for "shooting ranges" are not run by organizations that hold contracts for training mercenaries (as far as we know) or have any previous reported incidents of "murder" of innocent civilians (as far as we know). Perhaps we should be looking into who they are and their histories as well.

In any case, what Bonfiglio doesn't mention, or wish to acknowledge, is that we do not want Blackwater in San Diego (or anywhere) under any circumstances for the reasons Bob Filner, and others have already mentioned.

S

EX. Z
73

ORIGINAL

FILED
2008 MAY 27 AM 8:31

MAYER BROWN LLP
JOHN NADOLENCO (SBN 181128)
jnadolenco@mayerbrown.com
CHRISTOPHER MURPHY (SBN 120048)
cmurphy@mayerbrown.com
350 South Grand Avenue, 25th Floor
Los Angeles, CA 90071-1503
Telephone: (213) 229-9500
Facsimile: (213) 625-0248

NEIL DYMOTT FRANK MCFALL & TREXLER APLC
Michael I. Neil
mneil@neildymott.com
1020 2nd Avenue, Suite 2500
San Diego, CA 92101-4959
Telephone: (619) 238-1712
Facsimile: (619) 238-1562

Attorneys for Plaintiff
BLACKWATER LODGE AND TRAINING CENTER, INC., dba BLACKWATER WORLDWIDE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba BLACKWATER WORLDWIDE,

Plaintiff,

v.

KELLY BROUGHTON, in his capacity as Director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive,

Defendants.

Case No. 08 CV 0926 H WMc

DECLARATION OF JOHN NADOLENCO IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Date: TBD
Time: TBD
Location: Courtroom of the Honorable Marilyn L. Huff

[*Ex Parte* Application For Temporary Restraining Order and Order To Show Cause Re: Preliminary Injunction and Memorandum Of Points and Authorities In Support Thereof, Declaration of Brian Bonfiglio, and Appendix of Authority Filed, and Proposed Orders Lodged Concurrently Herewith]

I, John Nadolenco, declare as follows:

1. I am an attorney licensed to practice law in the United States, the State of California and before this Court. I am a partner of the law firm Mayer Brown LLP, counsel of record for Plaintiff Blackwater Lodge And Training Center, Inc. dba Blackwater Worldwide ("Blackwater").

2. Attached hereto as Exhibit A is a true and correct copy of a May 23, 2008 letter that I sent to the Defendants in the above-captioned matter, notifying them of Blackwater's *ex parte* application.

3. While I have not heard from any of the Defendants, I expect that they will oppose Blackwater's *ex parte* application, as noted in my May 23 letter.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the United States. Executed on May 23, 2008 in Los Angeles, California.

John Nadolenco

MAYER • BROWN

Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503

Main Tel (213) 229-9500
Main Fax (213) 625-0248
www.mayerbrown.com

John Nadolenco
Direct Tel (213) 229-5173
jnadolenco@mayerbrown.com

VIA HAND DELIVERY

May 23, 2008

Mayor Jerry Sanders
City Administration Building
11th Floor, 2002 C Street
San Diego, CA 92101

Ms. Afsaneh Ahmadi , P.E.
Building, Safety and Construction
Chief Building Official, Chief Deputy Director
1222 First Avenue, #MS 501
San Diego, CA 92101-4155

Mr. Kelly Broughton
Director
Development Services Department
1222 First Avenue, #MS 501
San Diego, CA 92101-4155

Mr. Michael J. Aguirre
Office of the City Attorney
Civic Center Plaza
1200 Third Avenue, #1620
San Diego, CA 92101

Dear Messrs. Sanders, Broughton and Aguirre, and Ms. Ahmadi:

As you know, our firm represents Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater") in connection with the training site in Otay Mesa for U.S. Navy sailors. Despite repeated formal and informal requests to reconsider the flawed analysis in the City Attorney's May 16, 2008 Memorandum recommending the issuance of a "Stop Work Order," or, in the alternative, the revocation of the Certificate of Occupancy for the Otay Mesa facility, the City has not changed its position as set forth in its May 19, 2008 letter. Nor has the City issued Blackwater a Certificate of Occupancy, despite having formally approved occupation of the facility. If Blackwater is unable to start training the U.S. Navy's sailors on June 2—and assure the Navy that it will be able to do so well before then—Blackwater will be irreparably harmed, its constitutional rights will have been violated, its reputation severely damaged, its contractual relationship with the Navy jeopardized, and its ability to train the country's armed forces severely compromised, which can have tragic consequences.

EX. A
2

Mayer Brown LLP operates in combination with our associated English limited liability partnership.

Despite our requests, the City's position has not changed. Thus, today Blackwater will file the attached Complaint in the United States District Court for the Southern District of California. The Complaint will seek injunctive and declaratory relief and assert that Defendants Kelly Broughton (in his capacity as Director of the Department of Development Services of the City of San Diego), the Department of Development Services, Afsaneh Ahmadi (in her capacity as is the Chief Building Official for the City of San Diego) and the City of San Diego violated federal and state constitutional provisions ensuring procedural due process and the equal protection of the laws, as well as the dormant Commerce Clause of the United States Constitution. We certainly hope the Complaint causes the City to change its position before next Tuesday, May 27, 2008.

Anticipating that the City will not change its position, however, this letter also shall constitute notice that Blackwater intends to file on Tuesday, May 27, 2008, an *ex parte* application seeking a temporary restraining order and order to show cause re preliminary injunction requiring Defendants to perform the ministerial act of issuing the Certificate of Occupancy or, at the very least, allowing Blackwater to occupy and operate the Otay Mesa facility pending a hearing on a motion for preliminary injunction. We trust you will oppose our requested relief and will inform the Court of that position unless we hear otherwise.

Sincerely,

John Nadolenco

Enclosure